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# **REPORT ON THE VENDOR CONTROL SYSTEMS APPLIED BY THE MEMBER STATES**

(presented by the Commission)



# TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>5</b>
 <b>CHAPTER 1 BACKGROUND OF TAX-FREE SALES IN INTRA- COMMUNITY TRAFFIC UNTIL 30 JUNE 1999 .....</b>	 <b>7</b>
Section 1. The situation before 1993.....	7
Section 2. Abolition of customs controls and traveller's allowances.....	8
Section 3. Council decision to maintain tax-free sales in intra- Community trade until 30 June 1999 .....	8
Section 4. Control aspects.....	10
Section 5. Increase in the value allowance .....	10
 <b>CHAPTER 2 THE VENDOR CONTROL SYSTEM AND ITS APPLICATION IN THE MEMBER STATES .....</b>	 <b>13</b>
Section 1. Preliminary remarks.....	13
Section 2. The Council guidelines .....	13
Section 3. Control by the vendor in the different Member States .....	14
• At airports .....	15
• On board aircraft.....	16
• On board vessels .....	16

Section 4.	Description of control mechanisms in Member States .....	17
•	At airports .....	17
•	On board aircraft.....	17
•	On board vessels.....	17
•	General observations.....	18
Section 5.	Evaluation .....	18
•	At airports .....	18
•	On board aircraft.....	19
•	On board vessels.....	20
•	General observations.....	22
<b>CHAPTER 3 INTRA-COMMUNITY TAX-FREE SALES SINCE 1993.....</b>		<b>24</b>
Section 1.	Preliminary remarks .....	24
Section 2.	General development: Tax-free sales from 1992 to 1993 in ECU.....	25
Section 3.	Economic assessment: tax-free sales in 1992 and 1993 in national currency and in ECU .....	26
Section 4.	Evaluation .....	29

CONCLUSIONS.....	30
ANNEX 1	QUESTIONNAIRE ON THE NATIONAL CONTROL MEASURES ON TAX-FREE SALES IN INTRA-COMMUNITY TRAVEL .....33
ANNEX 2	ARTICLES OF COMMUNITY LEGISLATION PERTINENT TO TAX-FREE SALES.....39
ANNEX 3	"GUIDELINES FOR THE CONTROL OF TAX-FREE SALES IN THE COMMUNITY" AS AGREED BY THE COUNCIL OF MINISTERS ON 14 DECEMBER 1992 .....45
ANNEX 4	DATA SHEETS ASKING FOR STATISTICAL DATA ON TAX-FREE SALES.....51
ANNEX 5	THE VENDOR CONTROL SYSTEMS APPLIED IN THE VARIOUS MEMBER STATES ACCORDING TO THE REPLIES TO THE COMMISSION QUESTIONNAIRE .....61
ANNEX 6	THE VENDOR CONTROL SYSTEMS APPLIED IN THE VARIOUS MEMBER STATES ACCORDING TO THE COMMISSION'S SERVICES' MISSIONS TO MEMBER STATES .....75
ANNEX 7	RESULTS OF THE STATISTICAL RESEARCH ASSESSING MEMBER STATES' RETURNS TO THE APPROPRIATE DATA SHEETS.....95

## INTRODUCTION

1. The establishment of the internal market on 1 January 1993 was accompanied by the abolition of all tax controls at the internal borders of the European Community. Goods moving between Member States are no longer subject to a taxable event by the simple fact of being introduced into the territory of another Member State. Consequently, all kinds of travellers allowances have been abolished, with the exception of certain derogations concerning excisable goods brought into Denmark, Finland and Sweden. In principle, every citizen of the European Union is entitled to purchase any good for personal use wherever in the Community he so chooses. VAT and excise duties will normally be paid in the country where the goods are acquired (although special rules still apply to distance sales, e.g. mail-order purchases, and in these cases the tax is normally paid in the Member State of the purchaser).
2. Tax-free shopping is not compatible with these basic elements of an internal market. In particular, tax-free shopping may cause serious distortions of competition between shops selling tax-free goods and those selling goods inclusive of tax. Consequently, Member States have not allowed tax-free shopping within their own territory if no assurance is given that the goods bought are leaving this territory. This is the reason why tax-free shops are generally situated at the border or at the point of departure of a means of transport leaving the country directly.
3. Under these circumstances, the goods were considered to be purchased for exportation and a tax exemption was compatible with the general tax relief granted on exportation. One has to recall, however, that the Member State of importation had a right to tax goods purchased tax-free if they exceeded certain value or quantity limits. With abolition of frontier controls being one of the key features of the internal market, the possibility of taxing goods on importation has disappeared; consequently, controls can no longer be carried out at the border to check the value or quantity limits.
4. Nevertheless, the Council of Ministers judged that it would be inappropriate to end intra-Community tax-free shopping immediately on 1 January 1993. A number of reasons were behind this decision, including the need to finance necessary changes at airports to permit separation of international flights from domestic or intra-Community flights and the need to help finance ferry companies sailing important routes. The Council therefore granted a transitional period until 30 June 1999, by which date all business sectors involved in tax-free shopping should have made preparations for the new situation. Technically, the Council had to define who should be entitled to benefit from tax-free shopping, how this could be done in the absence of border controls and, finally, what kind of control mechanisms could be implemented in order to limit distortions of competition.
5. As the intention was only to grant a transitional period and not to create new opportunities for tax-free shopping, the Council sought simply to prolong existing arrangements. Accordingly it authorized Member States to exempt supplies made by tax-free shops to passengers traveling on intra-Community flights or undertaking sea crossings to other Member States and carrying with them the goods purchased. In order to ensure equal treatment with the ferries, the Council also authorized exempted supplies of goods in either of the two Channel-tunnel terminals. The exact arrangements for VAT

and excise duties are laid down in Directives 91/680/EEC (incorporating Article 28k into Directive 77/388/EEC) and 92/12/EEC (Article 28) respectively.

6. With regard to control, in the absence of any possible control of the passenger in the Member State of arrival, a completely new mechanism had to be invented. Indeed, the only person who might be able to control the correct application of the tax exemption is the vendor himself, even if one has to acknowledge that the vendor also has an interest in selling as much as possible. In principle, tax control measures have always been left to a very large extent to the Member States themselves. The Council therefore simply reached a political agreement on a certain minimum standard of control which the Member States should observe and which is based on control by the vendor himself and on subsequent control of the vendor by the tax administration. In any event, the control mechanisms must ensure compliance with the value and quantity limits in force for the overall exemptions per journey and per passenger. The Council urged on the Commission to present a report on the proper functioning of this so called vendor control system in the Member States. This report is in response to that request.
7. The Council of Ministers returned to the issue of tax-free shopping in 1994 when amending the allowances for travellers coming from third countries. In fact, these allowances had served as a reference framework in defining the limits of the tax exemptions applicable for intra-Community tax-free shopping. By increasing the third-country allowances from ECU 45 to ECU 175, the intra-Community limit would have been increased automatically as well. With regard to the intention only to maintain but not to promote tax-free shopping, but also taking into account that a limit of ECU 45 may not be sufficient to maintain in real terms the level of tax-free shopping which existed before 1993, the Council decided to raise this limit to ECU 90. This increase came into force on 1 April 1994. The Council also asked the Commission to report on the implementation of this new limit and on the possible need to adapt this limit in the future. As this request clearly relates to the functioning of the control mechanisms as applied by the Member States, the Commission examines both matters in this report.
8. In preparing this report, the Commission has used the following sources of information:
  - Member States' replies to a questionnaire drawn up by the Commission (Annex 1);
  - fact-finding missions in the Member States undertaken by Commission officials in collaboration with the competent national authorities;
  - statistical data on tax-free sales provided by Member States at the request of the Commission;
  - submissions by the associations representing operators of tax-free shops.
9. Most of this information has been discussed on several occasions with the delegations of the Member States in a Commission ad hoc working group.
10. As most of the relevant information was gathered before 1995, this report does not address the situation in the three new Member States, although they will be invited to comment explicitly on the contents of this report.

# **CHAPTER 1**

## **BACKGROUND OF TAX-FREE SALES IN INTRA-COMMUNITY TRAFFIC UNTIL 30 JUNE 1999**

### **Section 1. The situation before 1993**

11. Before 1993 Council Directive 69/169/EEC on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel set out the framework for traveller's tax-free purchases. A distinction was made between travellers coming from third countries and those arriving from another Member State.
12. Higher tax relieves were granted to intra-Community travellers who had bought goods, inclusive of all taxes, in another Member State. Lower exemptions were introduced for goods acquired in third countries. This distinction reflected the higher level of integration between the Member States of the Community and took particular account of the fact that, broadly speaking, all Member States apply similar indirect taxes, whereas this cannot be assumed in the case of third countries.
13. Purchases in a so-called duty-free shop situated in another Member State (literally) do not fall into any of these two categories. In this case, the goods have been acquired without payment of taxes, but not in a third country. In order not to disadvantage a traveller coming from another Member State as compared with a traveller from a third country who could also have purchased goods tax-free, the European Court of Justice confirmed in several rulings that the third-country allowance should also apply to goods bought tax-free in the Community.
14. For tax purposes, tax-free shopping was based on the concepts of „importation“ and „exportation“. Indeed, sales were exempted from tax where the goods were intended for exportation. This exemption did not even have to be supported by documentation because the circumstances of the purchase (in the international area of airports, on board ferries, etc.) already suggested that the purchaser was leaving the country with the goods. However, this concept was basically the same as that applying (and still applying with regard to third countries) to tax-free sales by shops situated within the country but selling to travellers leaving the country. The only difference was that, in the latter case, the traveller had to provide a written proof of exportation generally stamped by customs. On entering another Member State, the traveller had to declare all goods he intended to import and, in principle, to pay tax on all imported goods. At that moment, the traveller's allowance was applied and tax-free importation within the limits laid down was permitted.
15. The functioning of this system required a taxable event on importation and the possibility for customs to carry out checks to verify an import declaration by the traveller.



## **Section 2. Abolition of customs controls and traveller's allowances**

16. One of the basic achievements of the internal market was the abolition of controls at the internal borders of the Community. In the tax field, this spelled the end for the concepts of „importation“ and „exportation“ between Member States. Thus, the simple movement of goods between two Member States no longer has automatic consequences in the tax sphere.
17. Accordingly, one major objective was achieved: private persons may buy goods for personal use in any Member State and carry with them the goods purchased in any other Member State without having to declare these goods at the border or to pay tax. In that respect, the principle of taxation in the country of origin was translated into practice. Admittedly, some exceptions do exist, such as transitional arrangements for Denmark, Sweden and Finland, and the rules for taxation of new cars or some distance-selling arrangements, but they do not call into question the principle as such. Only where purchases are made not for personal but for commercial reasons do tax rules continue to provide for taxation in the Member State of destination, where final consumption will probably take place.
18. In this new situation, where taxation on importation can no longer arise within the Community, the application of traveller's allowances is no longer appropriate. Consequently, tax-free shopping within the Community would have ended.

## **Section 3. Council decision to maintain tax-free sales in intra-Community trade until 30 June 1999**

19. Tax-free sales are not just a bonus for intra-Community travellers; they can have other consequences as well. Tax-free shops in airports are a major source of revenue for the airport authorities and in some cases are even operated by, or in conjunction with, these authorities. This permits a certain amount of indirect financing of airport infrastructures outside the framework of the national budget. It also allows airport fees to be kept at a low level, thus promoting tourism. Ferry companies generate a large part of their revenue from tax-free sales, which enable them to keep fares lower than would otherwise be the case. All these financing benefits stem from the Member States' decision not to charge indirect taxes on sales by tax-free shops.
20. While adapting indirect tax rules to the basic requirement of the internal market to abolish frontier controls, Member States were not prepared to change the situation of duty-free shops at the same time. The Council therefore decided to prolong this situation on a temporary basis until the end of June 1999. This decision was motivated by the concern „to alleviate both the social repercussions in the sectors concerned and regional difficulties particularly in border regions, which might arise as a result of the abolition of

taxes on imports and exemption on exports in trade between Member States"<sup>1</sup>. Considerations regarding the above-mentioned financing benefits provided by tax-free shops may also have played a role.

21. Following this decision, the legal framework had to be adapted to the new tax concept put into place in 1993. In the absence of importation by a traveller, the tax relief could no longer be applied to the traveller himself, i.e. the purchaser. The same result as that of a definitive tax relief in his favor would, however, be achieved by maintaining the tax exemption in the hands of the vendor. This exemption, by contrast, could not continue to be based on the exportation of the goods to another Member State since such exportation no longer exists as a taxable event. Accordingly, the conditions governing that exemption had to be redefined.
22. Article 28k of the Sixth VAT Directive (Directive 77/388/EEC), as inserted by Article 1(22) of Directive 91/680/EEC, and Article 28 of Directive 92/12/EEC (for excise duties) authorize Member States to grant tax exemptions to tax-free shops for the supply of goods to be carried in the personal luggage of passengers taking intra-Community flights or sea crossings to other Member States, within the limits which also apply to travellers from a third country entering the Community (see Article 1 of Directive 69/169/EEC). The exemption also covers supplies of goods by tax-free shops in either of the two Channel tunnel terminals to passengers holding valid tickets for the journey between those two terminals. The exact wording of the relevant articles are reproduced in Annex 2.
23. Even though the Council endeavored to reproduce as exactly as possible the situation that existed before 1993, two major changes can be identified. The first one concerns the extension of the arrangements to tax-free shops at the Channel tunnel terminals. This modification was motivated by the concern to take into account this new link between France and the United Kingdom in comparison to the ferries providing the sea link. The second change relates to the quantity of tax-free goods the traveller is entitled to purchase. With the concept of importation, the quantity was defined by the relevant value and quantity limits applicable at the time of importation. Even though the Council did not change these limits, the new rules also allow travellers to bring back tax-free goods purchased on the first leg of a journey, which under the old scheme either had to be consumed in the other Member State or were to be included in the goods for which the traveller's allowance was claimed. Especially with regard to day trips, this can have the effect of doubling the import allowances previously applicable. However, any attempt to avoid this would have required a very complicated and impracticable set of rules.
24. The decision is granted a transitional period until 1999 allowing the sectors concerned (airport authorities, airlines, ferry companies, producers of goods usually sold in tax-free shops and the shop operators themselves) sufficient time to prepare for a situation without intra-Community tax-free sales. All Member States exercise the option open to them, but two of them limit the application of the exemption to goods which are subject to excise duties.

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<sup>1</sup> *Recitals to the directives concerned*

## **Section 4. Control aspects**

25. In accordance with the principle of subsidiary, the application of Community legislation and the setting-up of appropriate control mechanisms are generally left to Member States. Article 28k of Directive 77/388/EEC and Article 28 of Directive 92/12/EEC therefore require the Member States only to take the measures necessary to ensure the correct and straightforward application of the exemptions provided for in those articles and to prevent any evasion, avoidance or abuse.
26. Since the effectiveness of controls on the exemption does not necessarily affect the interests of the carrying out the controls country but may be of greater importance for the Member State of arrival where the tax-free goods purchased will be consumed, the Council and the Commission agreed in a statement entered in the minutes that a certain level of control would have to be guaranteed throughout the Community. In order to prevent the reintroduction of any checks at the border, it was also decided that the control measures would focus primarily on the vendor.
27. Indeed, as the tax exemption is to be applied by the vendor, he is the only person who can confirm that the sale does not exceed the relevant value or quantity limits. However, this is the case only in respect of the supply he effects - it does not safeguard against multiple purchases by the same passenger during the same journey. Therefore any control scheme has to address the problem of how to prevent repeated purchases by a passenger in tax-free shopping areas, maybe even in different areas (e.g. at the airport and on board the aircraft). It is obvious that the vendor cannot possess all the relevant information without an additional mechanism for providing such information. Furthermore, this system places the vendor in a very difficult situation: compliance with the limits on his tax-free sales conflicts with his commercial interest in promoting such sales.
28. To cope with this challenge, the Council adopted on 14 December 1992 a document entitled „Guidelines agreed between the Member States for the control of tax-free sales in the Community“. These guidelines set a minimum standard of control and are based on a two-level control system. The first level concerns the control to be carried out by the vendor himself, while the second one relates to possible control measures carried out by the tax authorities with regard to the vendor.
29. Even if these guidelines do not take the form of a legally binding instrument, it is clear that they form the basis for this report when it comes to evaluating the control measures taken by the Member States. The text of the guidelines is contained in Annex 3.

## **Section 5. Increase in the value allowance**

30. Until 31 March 1994 Member States were entitled to authorize tax-free purchases of goods within the following limits, which were also applicable as allowances for travellers from third countries:
31. The following table shows the limits by quantity:

Tobacco products	Alcoholic beverages	Perfume and toilet water
200 cigarettes; or 100 cigarillos, or 50 cigars, or 250 gm of smoking tobacco	1 liter of spirits or strong liqueurs over 22% by volume; or 2 liters of spirits with an alcoholic strength of not more than 22% by volume; or 2 liters of fortified wine and sparkling wines; and 2 liters of still wine	50 gm of perfume and 250 ml of toilet water

32. The value limit was set initially at ECU 45. It applies to all the goods which are not covered by a quantity limit.
33. By adopting Directive 94/4/EC, the Council increased the value limit for third-country travellers from ECU 45 to ECU 175 and defined a specific value limit for tax-free sales within the Community of ECU 90.
34. This was the first time that different value limits for third-country travellers and tax-free purchases within the Community had been set. The differentiation is now justified because of the different concepts applied. With regard to third-country travellers, the relief from import duties still applies, whereas intra-Community tax-free sales benefit from a tax exemption for the vendor's supply. This reflects the establishment of the internal market, with the same tax regime being applied to all Community purchasers even if they come from another Member State.
35. At first sight, the decision to increase the intra-Community value limit is not consistent with the approach initially taken by the Council, namely to allow only a transitional period during which tax-free sales could be maintained but not promoted. However, a number of objective reasons were put forward to justify an increase:
  - the limit of ECU 45 would not permit the operators to maintain in real terms tax-free sales at the level existing before 1993;
  - as intra-Community import controls by Member States were significantly lowered before 1993, the value limit applicable was less and less frequently observed by travellers and a return to its stringent application would have created dissatisfaction among passengers and operators;
  - the administrative costs and burdens with which the vendor had to contend in implementing the vendor control system were disproportionate to the very low value of the goods concerned.

36. All these reasons being considered in a very global way, the Council asked the Commission to examine whether a further revision of the value limit should be considered.

## **CHAPTER 2**

### **THE VENDOR CONTROL SYSTEM AND ITS APPLICATION IN THE MEMBER STATES**

#### **Section 1. Preliminary remarks**

37. If tax-free sales are permitted only under specific conditions and in particular circumstances, such restrictions arise from Community legislation and therefore provide a common framework for all Member States. In practice, however, the use of this framework depends very much on geographical and local situations. Tax-free sales are allowed only at airports and in ports, on board aircraft or ships during flights or sea crossings, and in the special case of the Channel Tunnel. Each of these places has its own particular characteristics and forms a specific category with its own practical issues. Furthermore, sea crossings can take place only between some Member States and differ considerably in length.
38. Member States have finally chosen different options with regard to the implementation of tax-free-sales. Certain Member States allow purchases exceeding the limits of the tax exemption as long as tax is properly accounted for, while others prohibit such sales. Some Member States authorize the operation of tax-free and tax-paid shops in the same area, while others do not offer this possibility. Sometimes, all tax-free shops are operated by only one company, which can be either privately owned or partly or completely state-owned; in other areas each shop is owned individually.
39. All these differences suggest that Member States decide on the necessary control measures for tax-free shops themselves as is usually the case with other domestically tax exemptions. This case is different, however, because the exemption for tax-free sales, by definition, concerns goods that are going to be transported to another Member State and may, if not efficiently controlled, cause distortions that will work to the detriment of retailers in that Member State. This led the Council to agree, by the way of „guidelines“, to a minimum standard of control without, however, committing the Member States to a legal obligation in this respect. In addition, the content of the guidelines leaves enough flexibility to each Member State for adapting its control system to any particular situation.

#### **Section 2. The Council guidelines**

40. The guidelines that are reproduced in Annex 3 must form the basis for any control system put into place by a Member State and, accordingly, for the assessment of such systems in the present report.
41. The guidelines state, in the first place, a self-evident principle: the vendor must observe all conditions of the tax exemption and, consequently, observe the quantity and value limits applicable.
42. The problem now is how to place the vendor in such a position that he can ascertain all the relevant factors determining the tax exemption and especially its size. He can, in

principle, have two sources of information: the passenger and any other shop operator.

43. The passenger is the only person who can inform the vendor about the conditions of the journey: he is holding a valid ticket for the journey, the immediate destination of his trip is a place situated in another Member State, etc. If the passenger is not already on board the means of transport and if all these particulars are not evident, the usual way to provide this information is to show his ticket or boarding card to the shop operator.
44. The situation is more complicated with regard to information about previous purchases by the passenger that need to be taken into account in calculating the remaining portions of the exemption limits. The passenger can show the invoice, but how can he be obliged to do so? Again the easiest way is to include the relevant information on the ticket or the boarding card which he might have to show in any event. Accordingly, the guidelines favour this approach, specifying that, if appropriate, the ticket or boarding card could be replaced by a specific voucher. An alternative could be to ensure that the information about a tax-free purchase by an individual passenger is stored in such a way as to permit all operators to share this information. In that case, it would be sufficient for the next operator to identify the passenger, e.g. by his seat number in the plane.
45. Whichever approach is chosen, the Member State will have to choose at least one type of system that ensures that the appropriate information is available to the vendor.
46. Another aspect concerns the control of the vendor by the authorities of the Member State. Such control requires, in the first place, proper accounting and records of all sales by the vendor. In practice, however, it will be impossible for the vendor to keep any proof of the conditions of an individual sale, since this would require keeping copies of the tickets or other documents and would be impossible to manage without adding considerably to the time necessary for a given sale. Therefore, another approach was mentioned by the guidelines, the so-called global accounting method, whereby the tax authorities have to compare overall tax-free sales with the total number of passengers for a specific journey or for the journeys undertaken during a given period. Under no circumstances must total sales exceed the allowed limits multiplied by the number of passengers. To take account of the fact that, generally speaking, not all travellers would exercise the option of buying goods tax-free, this figure could be adjusted. Thus, the authorities could at least check the overall reliability of the vendor's own control arrangements.
47. With regard to sea links between two Member States, a number of specific factors can arise, e.g. the ferry company may be responsible to both countries' authorities. For this reason, this field was to be covered by bilateral agreements between the Member States defining the control system and its practical arrangements.
48. The possible involvement of two different Member States has further led to a statement in the guidelines that the Member States should make best use of the Community provisions on administrative cooperation and mutual assistance.

### **Section 3. Control by the vendor in the different Member States**

49. It has already been explained that the factual situations differ a great deal depending on

where the tax-free shop is located. To take account of these major differences, this report distinguishes three main categories:

- sales at airports;
- sales on board aircraft;
- sales on board vessels.

50. This section confines itself to describing the general approach to control taken by Member States. More detailed information about the situation in the individual Member States can be found in Annex 6, where, in particular, the results of the fact-finding visits to the Member States are summarized.

• **At airports**

51. Various situations can be identified : passengers may buy goods tax-free more than once at the same shop, they may buy at different shops at the airport and they may even buy at the airport and subsequently on board. All these potential tax-free purchase possibilities have to respect the limits for one passenger during one journey. Therefore the system applied by one vendor should in principle be able to cope with all these possibilities for the passenger to buy goods tax-free. A system whereby a vendor monitors only individual sales is insufficient to meet the criteria set out above. Vendors are usually aware of the existing limits and inform and advise potential buyers of these limits. Individual sales by the same vendor are therefore normally within the limits.
52. To prevent subsequent tax-free sales exceeding the limits for one passenger per journey, vendors at airports usually make use of boarding cards or equivalent transport documents to control these sales. Once a sale is made, the boarding card is stamped by the vendor with a view to preventing repeat sales at the same outlet and multiple sales (by other outlets at the airport).
53. The features of this stamping procedure differ in the Member States. In most Member States the stamp on the boarding card gives an indication only that a tax-free sale has been made. In some Member States the indication includes the value and/or quantity of the goods sold. One Member State attaches the sales ticket to the boarding card in order to allow subsequent sellers to verify the right of the passenger to subsequent tax-free purchases (at the same outlet or at other outlets). One Member State does not make use of the procedure of stamping the boarding card at all. In this last case, vendor control is based only on monitoring by the vendor of each individual sale; this system appears not to be capable of preventing unauthorized tax-free sales. In certain Member States each sale is registered in the cash register and combined with data of the individual passenger, such as flight and seat numbers. Subsequent sales at the same outlet or other outlets connected to this registration system can then be compared with previous purchases. In some Member States appropriate software and computer systems have been developed (either by the operators or by customs) in order to ensure that the vendor control system is applied properly, whereas others rely fully on "traditional" control procedures. Where computer systems for the shopkeepers are installed, they are linked to the customs network in some countries.



- **On board aircraft**

54. For the control of tax-free sales on board aircraft, Member States generally do not make use of the boarding card or an equivalent document. According to the Member States, the use of such documents would encounter practical problems since passengers, once on board, often do not retain their boarding cards.
55. The different situation between a tax-free outlet established within an airport and tax-free sales on board is a further reason for Member States to accept a more limited form of control for on-board sales. The volume of tax-free sales on board aircraft is limited by the very nature of these sales. Control follows from the fact that actual sales are monitored by the crew, by respecting the limits as to the value and/or the quantities for each individual sale of these goods.
56. Almost none of the Member States applies a system whereby a link can be established between tax-free purchases in the airport and possible subsequent purchases during the flight (this is the same situation for tax-free sales in harbors and possible subsequent sales on board ferries). Some Member States do nevertheless apply a control system for monitoring these subsequent tax-free sales by use of a pre-ordering system or by use of a voucher which is to be presented and stamped for each tax-free purchase. In the pre-ordering system, the boarding card is already stamped when issued.

- **On board vessels**

57. The picture of the control systems applied by the vendors is more diffuse. Generally, a voucher is distributed with the issue of the boarding card; this voucher contains information on the quantitative limits allowed for goods subject to excise duties. It is marked once a sale of this category of goods has been effected. Another purchase of these goods can be made only if the purchaser can show, on the basis of the receipt for his first purchase, that the allowed limit has not yet been reached. For goods subject to the value limit, the control limits are often less strict, since for these purchases there is no marking at all. In these cases the control follows from the fact that a single tax-free purchase can be made only up to the value limit.
58. On short-distance routes the voucher system is rarely used. The only means of control is by supplying information to the public on the allowed limits for goods to be purchased tax-free and by the vendor exercising self-restraint in restricting each individual tax-free sale to the allowed amount or quantity. Reasons for non-use of a voucher system in these situations seem to be the limited duration of these journeys and the large number of passengers. A further argument is that vouchers can be exchanged between passengers, in which case the objective of limiting tax-free purchases per passenger can be easily frustrated.
59. As far as the Commission is aware, only one bilateral agreement in relation to tax-free sales on board ferries seems as yet to have been reached.

## **Section 4. Description of control mechanisms in Member States**

### **• At airports**

60. Basically, Member States control vendors at tax-free outlets at airports by focusing on their bookkeeping. This general heading comprises in practice various forms of control. Member States, however, are fundamentally restricted to monitoring goods bought and sold by the tax-free outlet or company. This form of control conforms with and follows from the normal VAT control measures. Data on sales to individual customers, which would be the specific item to control in the case of tax-free sales, are seldom available. In some cases data on sales per period, sometimes per day or per flight, are at hand and give some in-depth indication as to individual sales. In a number of Member States tax-free vendors have to operate under a customs and/or excise warehousing system. This system provides for a certain degree of control of the vendor's standing and his capacity to ensure that the existing rules of the tax-free regime are respected. Certain bookkeeping rules apply in these situations which usually allow follow-up of movements of goods in and out of the warehouse.
61. Some Member States carry out on-site controls (spot checks) on vendors as well as their customers; this means control in and around the shops entitled to sell tax-free goods.
62. In over half of the Member States, global accounting systems are applied in respect of the conditions for tax-free sales. They are based on a daily or monthly summary of sales and can provide information such as the date of the sale, flight number, code, quantity and value of the goods, sometimes in relation to individual passengers. In some Member States this information is obtained from a computer network and sometimes simply provided manually.

### **• On board aircraft**

63. As to tax-free sales on board aircraft, Member States basically apply the same systems to control vendors as those used at airports. This means that they focus on bookkeeping and involve such features as authorized customs/excise warehouses, random and a posteriori controls and a global accounting system. Most Member States apply measures for controlling stocks of the airlines themselves and/or of the companies supplying those stocks. The global accounting system is designed to provide data on the total amount of sales on board; there data can, in principle, be compared with removals from stock. Nevertheless, it is not so much the total amount of sales compared with the total number of passengers which matters, but the fact that, for each single passenger, tax-free purchases are restricted to the allowed limits. Incidentally, one system provides lists identifying passengers who made tax-free purchases.

### **• On board vessels**

64. In this case, Member States once again make use of the measures applied to sales at airports and on board aircraft. One Member State mentions random tests (spot checks on travellers) at departure or upon arrival. Sometimes a comparison is made of recapitulative sales lists per journey, the sales vouchers handed to individual passengers and the number of passengers.

- **General observations**

65. It is to be observed that in all Member States certain penalties are imposed for non-compliance with the vendor control rules by the vendor and in some cases companies selling the goods may be fined.

## **Section 5. Evaluation**

66. This section presents an analysis of the present situation and is relevant to the final conclusions of the Commission with respect to the tax-free scheme and how it is operated by the Member States in its general context.

It also shows that, given the continuation of tax-free sales within the context of an internal market, there are a number of (other) issues which hamper effective control of tax-free sales in intra-Community passenger traffic or indicate its lack of effectiveness.

- **At airports**

67. Most of the Member States have introduced as a basis for the control system by the vendor - at least as regards tax-free sales at airports - the use of the boarding card. In this way they have satisfied the requirement to "introduce a system" for the purpose of controlling tax-free sales. However, this is where the similarity ends in respect of the situation in the Member States and a more critical assessment has to be made of the procedure and effectiveness of using the boarding card as a means of control.
68. Clearly, the boarding card could be useful as a means of control if it, or any other document, had to be used for any tax-free purchase and if all purchases were indicated on the card, with the objective of preventing any tax-free purchases above the agreed limits.
69. The use of the card varies between Member States, although no Member State makes the theoretically correct use of it or exploits its potential to the full. Practical considerations seem to be the cause of this restricted use of the card. It is clear that any system based on the use of a card which does not indicate the value and/or quantity of the goods purchased has limitations as to the possibility of preventing repeat or subsequent sales. A single stamp on the card, as seems to be the practice in most Member States, is only an indication that something has been bought tax-free and by no means guarantees that no (further) tax-free sales will be effected which exceed the allowed limits. Overall, a certain discipline of not allowing tax-free sales above the allowed limits seems to be followed by vendors and their personnel. As stated above, this is not sufficient to prevent subsequent and repeat tax-free sales. The Commission considers these provisions as inappropriate for attaining the objective laid down by the Council in its guidelines.
70. As regards to the measures the Member States have taken to control vendors, it should be borne in mind that a control system is not, in theory, capable of achieving the same objectives as controls applied by vendors. The latter controls, as first-line methods of control, basically should be capable of preventing any tax-free purchase by a passenger above the limits. If they do not meet this task, one can hardly expect the control system

of the Member State to rectify this. First and foremost, therefore Member States have the task of accepting or rejecting as insufficient certain types of vendor control systems, before checking that these systems are applied as designed and, finally, before making a more general, overall check as to whether the vendor control system can be said to have satisfied the expectations placed in it. This last check is, by definition, effected a posteriori and can therefore never replace the vendor's control system, which is designed to capture the individual tax-free purchases of passengers.

71. A number of remarks can be made regarding these systems. Occasionally a Member State mentions on-site controls (spot checks) on vendors and on travellers. Such controls could be very effective but they clearly need to be conducted within the territory of the Member State in the proper manner and in such a way as not to prejudice the gains coming from the internal market. In the case of controls on the vendor, who is the key point of control in the system, even the threat of well-advertised potential checks by competent authorities might prove highly effective. This type of physical control could be an additional element in the proper functioning of the vendor control system for example, abnormal quantities of products sold by tax-free outlets in other Member States were detected on certain intra-Community flights upon arrival. As to controls on the traveller, the Commission would stress once again that the traveller is not in charge of, or responsible for, the effectiveness of the vendor control system and is not liable to pay the tax even if he has exceeded the allowed tax-free limits.
72. Generally, Member States operate a system whereby operators have to be authorized before selling goods tax-free (along the lines of the warehousing arrangements). They apply a form of bookkeeping control that is usually backed up by customs or warehouse systems with the accompanying control rules. The weak point in these systems is that, as a rule, they are not equipped or barely equipped to compare sales data with individual passengers. The entire mechanism depends on the quality of data at vendor level. This is why these systems can give only a very general indication of the relationship between total tax-free sales over a given period and actual tax-free sales to passengers entitled to make tax-free purchases. Where this is not yet the case, the accounting systems should be improved in respect of their capacity to establish this link between tax-free purchases by individual passengers and total tax-free sales.

#### • On board aircraft

73. The general approach in this respect seems to be based on the consideration that unduly strict control measures for on-board sales could create distortions of competition with shops at the airport, which have the first contact with the passenger. This argument cannot be endorsed because it runs counter to the objective of the control.
74. The conclusion can be drawn that, in the majority of cases of controls in respect of sales on board aircraft, use of a boarding card is regarded as inappropriate. The reasons for this seem to be more of a practical than of a theoretical nature. The use of a boarding card for such sales is regarded as impractical because passengers sometimes do not retain these cards or because merely stamping the card without giving any indication of value or quantities limits the usefulness of this procedure. Another argument relates to the inherently limited scope for making tax-free sales on board aircraft.
75. These are rather odd considerations. If a passenger does not bother to retain his card in

order to make tax-free purchases, it is a moot point whether he really wants to exercise this right. An improperly applied control mechanism cannot be an argument for doing away with any control system, but should rather be one reason to improve the system by including more data on the card. The argument based on the limited scope for tax-free purchases on board aircraft may have some relevance for certain types of tax-free sales, but surely not for all of them.

76. In one respect, sales on board aircraft differ from sales by other tax-free outlets. By definition, they are the last opportunity for passengers to make tax-free purchases. If a proper link is established (see below) with tax-free sales at the airport and if each person on board is only given the opportunity to buy goods tax-free once, the crew is in a position to monitor tax-free sales within the limits, since there are no opportunities for repeat or subsequent sales.
77. A major shortcoming in almost all the Member States is the virtually complete absence of a system linking tax-free sales at airports to sales made on board aircraft. For the problem of repeat sales at airports, the only real solution seems to be, as indicated above, the proper use of a boarding card or any other document and/or the use of a registration system linking all tax-free purchases per passenger and all tax-free outlets. The use of the boarding card in this way would, at the same time, provide a solution to the problem of subsequent tax-free sales. Some Member States make use of a preliminary ordering system for passengers. Where this card is properly stamped on being issued and where, provided it contains the right data, it is required for any (additional) tax-free purchase, whether at the airport and or on board, the system could prove to be effective. While a number of Member States seem to apply some of the elements of this system, as far as the services of the Commission are aware, no Member State applies all the elements simultaneously.
78. As to the control systems applied by the Member States, emphasis is again placed on the control of the bookkeeping and accounting systems of vendors. The remarks made above regarding the limitations of this approach for the control of tax-free sales at airports apply here as well. Tax-free sales on board aircraft, however, provide additional and more specific means of control, since these sales concern only one vendor (the airline). For this reason some Member States have, in various forms, introduced a system whereby comparisons can be made between total goods brought on board for a specific flight and the goods sold during the flight. However, data are rarely available on individual purchases per passenger, which means that even for these Member States the control can only serve a global purpose.
79. A specific problem has to be addressed : the application of Community provisions in the context of non-domestic airline operators, and especially third-country operators, seems to create difficulties for Member States, e.g. control problems in cases where third-country airlines, having made a first stop on Community territory, make flights between two Community airports.

#### • On board vessels

80. In some cases the vendor control system, apart from the instruction to the employees not to sell more than the agreed limits for individual tax-free sales, is based on the use of a voucher. This voucher generally indicates the allowed tax-free quantities, but seems to

be applied only for sales of goods subject to these quantitative limits and not for goods subject to a value limit.

81. An important difference between boarding cards used for air travel and vouchers is that the vouchers do not bear the name of the passenger. A weakness of the voucher system is, therefore, that the vouchers can easily be exchanged between people who want to use them and those who do not. This seems to be one of the reasons why the voucher system is not used at all on certain high-density ferry lines. If the voucher is used, it has to be marked. In case of a subsequent purchase the seller, because of the marking, should ask for the receipt for the earlier purchase in order to determine whether the subsequent purchase is still within the allowed tax-free limits. The system is not watertight since, for subsequent purchases, one could produce an earlier receipt while withholding other receipts. There is the further possibility of using the vouchers of other passengers. Apart from these observations, there is also a risk of forged vouchers and the setting-up of "black markets" in vouchers.
82. The non-use of a system for controlling on purchases made on short-distance routes and goods subject to value limitations as well as the intrinsic weaknesses of the voucher system (exchangeability, failure to indicate quantities sold and complete absences of any control in some situations) effort scant guarantee that tax-free sales exceeding the limits can be prevented in an acceptable way and make tax-free sales on board ferries highly vulnerable to abuse.
83. The weakness of the vendor control systems applied on board ferries seems not to be counterbalanced by the control systems applied by the Member States. As mentioned above, these systems come only second in line to the vendor control systems themselves, since they are not designed to counter individual purchases above the limits.
84. It has been reported to the Commission that some ferry operators organize day-trips to other Member States at very low ticket prices. Sometimes passengers do not disembark in the adjoining Member State. The sole purpose of organizing these last trips seems to permit tax-free sales.
85. Ferry operators and national authorities in some Member States complain about the lack of vendor control carried out by the ferry operators and national authorities of other Member States on routes between them as this may lead to distortions of competition.
86. The setting-up of bilateral arrangements, as envisaged in the Council guidelines, is still at a early state of development. For the Commission, this is evidence that the Member States are not fulfilling the commitment entered into by the Council in its guidelines.
87. The measures taken by the Member States resemble their control systems for tax-free sales at airports and on board aircraft. There is a reliance on bookkeeping systems and warehousing systems, and here the same remarks can be made as above as regards its structural possibilities. In some Member States appropriate software and computer systems have been developed (either by the operators or by customs) in order to ensure the proper functioning of the vendor control system applied, whereas other Member States rely entirely on "traditional" control procedures. Where computer systems for shopkeepers are installed, they are in some countries linked to the customs network and in others not. The resemblance between sales on board ferries and on board flights,

namely that in each situation there is only one vendor, has led in some cases, including for the purpose of controlling sales on ferries, to control systems based on a comparison of total tax-free sales and passenger numbers. Even in these cases the results of the control measures can be evaluated only in a very general manner and these systems cannot therefore meet the goal of preventing tax-free sales exceeding the limits in individual cases.

88. From the various considerations set out in this section it is clear that the mechanisms and procedures put in place for implementing the vendor control system are not sufficient to achieve the objectives set by the Council.

#### • General observations

89. There may be some conflict here between the financial interests of the proprietors of tax-free shops (as well as of tax-paid shops) in making sales and their simultaneous obligation to ensure that the limits are respected.
90. This observation has to be viewed in the light of the fact that the public notices available to the public about the implementation of vendor control and mainly concerning the value and quantity limits leave room for mistakes or incomplete information. For example, public notices are inconsistent within the ferry sector, ranging from excellent to poor even within the same company. Passengers are usually provided with information about the quantitative limits for tax-free purchases by way of appropriately placed notices or price lists. For the most part, the information about the value limits in force is less clear, sometimes even non-existent or incomplete in that they indicate that regulations do exist which are to be complied with but do not specify their content.
91. Sometimes, the same price is applied to goods, independently if they are sold tax-free or tax-included. Under this scheme, VAT is accounted for on the basis of a mixed calculation involving tax-free and tax-paid purchases. In other words, passengers entitled or not to purchase tax-free pay the same average percentage of VAT without being aware of it. It is clear that this calculation method cannot provide an exact assessment of the tax due. In terms of pricing policy, a purchaser does not know the amount of tax contained in the sales price.

In most cases, controls do not exceed those imposed in the case of a warehouse keeper. Indeed, the only check is the proper recording of goods removed from the warehouse or the tax-free area. However, the specific conditions for the tax-free sale itself are not controlled. This scheme is not in line with the basic principles for collecting VAT.

92. The implementation at Community level of vendor control varies considerably even within the same Member State. As Member States depend largely on the control systems applied by the other Member States, less stringent control systems in some Member States have led to complaints of distortions of competition by operators in other Member States.
93. The Commission asked a number of representative international sea and air traffic associations and duty-free associations to give their initial views on the application of vendor control by their members. Their views differ in certain ways, because of the

variety of goods involved and of their specific interests.

94. Nonetheless, a general approach by the trade is to call on the Commission to take effective enforcement steps to ensure that all vendors and outlets in the Community have implemented the vendor control system with a basic degree of consistency in order to avoid undue distortions of competition and unnecessary confusion among the traveling public.
95. The further development of the sector is not consistent with the guidelines of the Council, which are designed solely to preserve temporarily the activities of the tax-free sales outlets that existed in 1993. On the contrary:
  - new forms of tax-free sales have been introduced (for instance, special arrangements that contain the sale of the air-ticket, accommodation and a "package" of tax-free goods; "pre-packing-systems") (see Chapter 2 Section 2 of Annex 6);
  - some (existing) tax-free sales areas have been enlarged (see Chapter 2 of Annex 6);
  - some tax-free shops have extended the range of goods offered (electrical goods, radios, high-quality textiles etc.) (see Chapter 2 Section 5 of Annex 6);
  - new tax-free and tax-paid shops have been opened or are to be opened in the near future (see Chapter 2 Sections 1 and 7 of Annex 6);
96. In this respect, the Commission reaffirms its position that it is opposed to the setting-up of new tax-free sales outlets in the Community under a system which is specific to the sector and that this situation is to be considered by all parties involved as a distinct and time-barred exception to the rules of the internal market.



## **CHAPTER 3**

### **INTRA-COMMUNITY TAX-FREE SALES SINCE 1993**

#### **Section 1. Preliminary remarks**

97. Traders' experience of vendor control in the first six months of 1993 is that, on the whole, the vendor control system appears to be functioning. Nevertheless, there is concern about a downturn (an average of at least 10%) in sales and revenues, notwithstanding increased numbers of passengers. This loss of business may, according to the trade, be taken as an indication, in part, that vendor control systems are proving to be more restrictive than the old procedures for customs monitoring upon arrival.
98. The purpose of requesting statistical data from Member States on tax-free sales in 1992 and 1993 was to enable the Commission to undertake an economic analysis of the impact of the introduction of the vendor control system on the business involved. The basic results of this economic analysis are set out in this chapter. The complete data, as summarized for analytical purposes, and the detailed evaluation of this data can be found in Annex 7.
99. The information on turnover figures, the number of passengers, operators, sales outlets as well as the total floor space taken by these outlets which have been made available to the Commission are incomplete. Some Member States did not provide information about all possible points, in particular place of sale (BE, DK, IRL, NL, PT and UK). Spain did not provide all the details, but in some cases only totals (for airports) and only figures for 1993 (for ferries). France indicated totals only and made a (non-requested) distinction between French and foreign products. Denmark was not able to give the full details for its airports and for the sales on board aircraft. Three Member States did not return the data sheets sent by the Commission (DE, IT and LU).

In this context, it has also to be noticed that the data covering airports include sales to travellers departing both to other Member States and to third countries. Concerning aircraft and ferries, the data provided by Member States covers solely sales on intra-EC flights and intra-Community sea-crossings.

100. The Commission is not in a position to check the reliability and the completeness of the figures put at its disposal. The lack of information which has been mentioned above is due to various reasons, e.g. the figures needed are not gathered at all, they are not available because of major bankruptcies, they are not accessible because of organizational difficulties, etc. The missing information from Germany and Luxembourg does not affect the conclusions to be drawn because in these countries VAT is charged on a flat-rate basis. Hence, the Commission estimates that the available data for the economic analysis are sufficient to identify the underlying trends of tax-free sales in the various Member States and at the different points of sale.
101. The following analysis also endeavours to discover the main reasons for the development of tax-free sales as shown in the statistical data. Nevertheless, it is not possible to take into account all general factors influencing tax-free sales, such as "normal" trade cycles, industrial fluctuations, changes in consumer behaviour, etc.

The analysis focuses on establishing the link between the evolution of tax-free sales and the respective development of the number of passengers and of operators as well as on the possible influence of exchange-rate fluctuations. Inflation is not taken into account directly. Apart from the fact that exchange rates to a certain extent reflect inflation, it is assumed to be a minor factor in this context, at least for the years 1992 and 1993. Thus, any major effect which is ascertained on the basis of the statistical data and cannot be explained by the factors described is expected to be linked to the introduction of the vendor control system. It follows from this approach that there is a methodical distinction made between the analysis in ECU and in national currency.

## **Section 2. General development: Tax-free sales from 1992 to 1993 in ECU<sup>2</sup>**

102. On the basis of the data available to the Commission, tax-free sales from 1992 to 1993 increased in airports by about 6% (calculated for seven countries; including both sales to intra-Community and to third-country travellers), on board aircraft by about 3% (calculated for seven countries; sales to intra-Community travellers only), on board ferries by about 25% (calculated for six countries; sales to intra-Community travellers only)<sup>3</sup>. Sales in ports are disregarded as only one Member State provided full data in this respect.

These figures reveal an increase in tax-free sales in ECU's despite the introduction of vendor control procedures in the Community. This increase has been noted even in airports (where control systems could be expected to be easily introduced), but especially on board ferries, apparently on account of the fact that the vendor control procedures are generally less strictly applied or not applied at all on board ships. The slight decrease in tax-free sales in ports cannot be assessed because the data basis for some of the ports in two Member States is too thin.

103. From the available data, tax-free sales in ECU from 1992 to 1993 changed in BE by -10.3%, in DK by +0.6%, in E by -4.6%, in EL by +9.2, in FR by -10.4%, in IRL by +1%, in NL by +2.5%, in PT by -9.4% and in the UK by +30.7%. In other words, in three Member States there is a significant decline in tax-free sales from 1992 to 1993 (about 10% in BE, FR and PT), there is a slight decrease in tax-free sales in Spain, in three Member States the turnover deriving from tax-free sales was more or less the same in 1992 and in 1993 (DK, IRL and NL), and in two Member States tax-free sales increased significantly from 1992 to 1993 (EL and UK).
104. There are large differences between the Member States concerning the results in the same place of sale (e.g. on board aircraft, ranging from -13% in PT to +235% in EL). In some cases specific explanations for this can be found. The increase for all places of sale in Greece is due mainly to sales on board aircraft. Since the number of passengers has changed only slightly in this period, it seems clear that a substantial shift in tax-free sales has taken place. France shows a relatively sharp decrease tax-free sales which is due

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<sup>2</sup> Conversion rates used: as respectively published on 30 September 1992 and on 30 September 1993.

<sup>3</sup> In this context, it has to be noted that sales on board aircraft and ferries relate to sales made by companies having their primary establishment in the Member State concerned.

mainly to intra-Community travel (decrease of 22.3%). However, even third-country tax-free sales have been falling, though less steeply. This shows that vendor control procedures are not the decisive factor in the decline.

105. Member States' information on tax-free sales per category of goods does not indicate a significant advantage for a particular category of product; the increase in ECU for all goods ranges from 9% to 14% (calculated on the basis of figures from eight Member States). In this context, France is, to some extent, an exception to the rule. Sales figures for the different product categories vary according to the place where sales are made. The main increase has been recorded on board aircraft and on board ferries.

### **Section 3. Economic assessment: tax-free sales in 1992 and 1993 in national currency and in ECU**

106. The following table sets out the statistical basis for the economic analysis of the development of tax-free sales in the Community from 1992 to 1993. For this purpose, the percentage change is calculated:
- for total sales, in national currency and in ECU;
  - for sales per passenger, in ECU only.

The information is given for each Member State and for each place of sale.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
MS <sup>a</sup>	Airports <sup>b</sup>			Aircraft <sup>c</sup>			Ferries <sup>c</sup>		
	Change in nat. curr. <sup>d</sup> (%)	Change in ECU p/p <sup>e</sup> (%)	Change in ECU (%)	Change in nat. curr. <sup>d</sup> (%)	Change in ECU p/p <sup>e</sup> (%)	Change in ECU (%)	Change in nat. curr. <sup>d</sup> (%)	Change in ECU p/p <sup>e</sup> (%)	Change in ECU (%)
BE	-10.18	-21	-11	-4.22	-30.10	-5.62	-5.59	-7.96	-6.97
DK	+22.16	+11	+21	+29.79	-1.51	+28.53	+9.91	+6.22	+0.01
EL	+16.22	-1	+7	+209.27	+227.36	+235.05	+15.05	+17.68	+6.04
ES	+5.87	-7	-5	+13.39	-5.25	+1.77			
IRL	+4.93	-4	-4	+42.61	+26.91	+31.04	+14.03	+9.34	+4.78
NL	-1.10	-10	+3	-15.80	-16.04	-12.66	+9.05	+12.76	+13.13
PT	+2.05	-9	-9	-2.60	-23.97	-13.11			
UK	+17.60	+14	+19				+51.81	+32.79	+53.76

107 As far as airports are concerned, the change of tax-free sales in airports per country from 1992 to 1993 in national currency (column 2) and in ECU (column 4) showed different in Member States: In some countries exchange rates did, to a certain extent, influence the evolution of tax-free sales at airports (EL, ES, IRL and PT), in others no major impact can be established. If there is such an influence, the increase in national currency is higher than in ECU or there is even a decrease of sales in ECU. This is a logical consequence of depreciation, which at as such might have been a reason for the increase as a whole. Comparing column 3 [change in ECU per passenger] with comparing it with the figures from column 4 [change in absolute figures] reveals no clear single trend. For Ireland, Spain and Portugal there is no or little difference between both figures which seems to indicate that the increase of tax-free sales is linked to the increase of the number of passengers. For Belgium, Denmark, Greece, the Netherlands and the United Kingdom the development of sales per passenger is more negative than in absolute

<sup>a</sup> Member State

<sup>b</sup> Includes sales to intra-Community and to third-country travellers.

<sup>c</sup> Only sales on intra-Community flights or intra-Community sea crossings.

<sup>d</sup> National currency

<sup>e</sup> Per passenger.

figures.

108. Only four Member States were able to supply separate data on sales to travellers departing to other Member States. They are set out in the following table:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Member State	Intra-EC sales in 1992 (national currency)	Intra-EC sales in 1993 (national currency)	Change	Passengers in 1992 (Intra-EC)	Passengers in 1993 (Intra-EC)	Change in intra-EC sales p/p (in ECU)	Change in total intra-EC sales (in ECU)
BE	2,093,790,244	1,642,015,562	-22%				-23%
EL	11,922,295,077	13,702,175,556	+15%	4,478,437	4,941,906	-4%	+6%
IRL	36,076,977	37,555,866	+4%	3,085,179	3,141,186	-6%	-4%
UK	117,576,077	129,984,163	+11%	13,721,009	14,211,040	+8%	+12%

Tax-free sales in airports per country from 1992 to 1993 in national currency (column 4) and in ECU (column 8) differ in Greece and Ireland (mainly due to changes in exchange rates) and do not show such differences for Belgium and the UK. Looking into column 7 [change in ECU per passenger] and comparing it with the figures from column 8 [change in absolute figures] reveals a major difference for Greece only which is absolutely coherent with the overall trend established above. Consequently, there is no evidence suggesting that the overall tax-free sales trends at the time do not reflect the intra-Community component properly.

109. Concerning airline sales set out in the table under paragraph 106, the possible influence of changes in exchange rates can be seen by comparing the change in tax-free sales figures on board aircraft in 1992 and 1993 in national currency (column 5) with those in ECU (column 7). This comparison reveals no major difference for Belgium, Denmark and the Netherlands, whereas in Ireland, Portugal and Spain the change in national currency is larger (or less negative) than that in ECU (and seems to have stimulated tax-free sales on board aircraft). Regarding the number of passengers transported and its relationship to the development of tax-free sales on board aircraft, a look at columns 6 [change in ECU per passenger] and 7 [change in absolute figures] apparently indicates that in most countries passengers seem to have changed their purchasing behavior significantly. While the decrease in tax-free sales on board aircraft per passenger is generally more marked per passenger than in absolute figures, the converse is true for Denmark.
110. For tax-free sales on ferries, the percentage changes in national currency (column 8) and in ECU (column 10) are significantly different in three countries: In Denmark, Greece and Ireland the positive trend is higher in national currency than in ECU's, and this may suggest the intrinsic influence of devaluation on the increase in tax-free sales in a country

whose currency becomes weaker. The figures in columns 9 [change in ECU per passenger] and 10 [change in absolute figures] indicate that in Belgium the decrease in sales in absolute figures corresponds to an increase per passenger or, in other words, that Belgium has suffered from an even greater deterioration of tax-free business than the pure figures would seem to indicate at first glance. In Denmark, Ireland and Spain the increase per passenger is also higher than the increase in absolute figures. Only in United Kingdom, which holds the largest share of the market in this respect, the increase per passenger is smaller than in absolute figures. However, a figure of over 30% is still an impressive increase.

## Section 4. Evaluation

111. From the data available, the statistical research concerning the evolution of tax-free sales in ECU throughout the Community clearly indicates that from 1992 to 1993 there was an overall increase in tax-free sales. This increase is distributed geographically, and major differences regarding the place of sale (related to the means of transport) are discernible whereas the category of goods does not play an important role in this respect.
112. It is evident that the vendor control systems applied in the different Member States do not prevent tax-free sales developing differently. Throughout the Community, controls carried out on board aircraft and especially on board ferries are essentially less strict than those in force at airports. Passengers obviously become aware of these differences in control and adapt their purchasing behavior accordingly.
113. Passenger traffic as a whole increased from 1992 to 1993 and thus favored the positive development of tax-free sales. However, where the purchases per passenger are concerned, there is only a significant overall increase for sales on board ferries, which can be related to vendor control procedures. Other explanations for this change are not convincing because a general increase in the demand for alcoholic beverages, tobacco products, perfumes, toilet waters and luxury goods at the time is not plausible.
114. In some countries the devaluation of the national currency had a certain stimulating effect on the evolution of tax-free sales. Nonetheless, for the time being exchange rates do not have a major influence on the development of tax-free sales.
115. Taking into account the evolution of tax-free sales from 1992 to 1993 and the evolution of passenger traffic and exchange rates during the same period, the general conclusion to be drawn from the corresponding statistical data is that the introduction of vendor control procedures did not adversely affect trade in tax-free goods. If any such effect was identified in a particular case, it was not decisive. The available data make it evident that, generally speaking, there has been a rise in tax-free sales since 1993. Therefore, the conclusion can be drawn that these systems do not function well enough to make tax-free sales above the appropriate thresholds impossible.
116. In the light of the basic Council decision of 14 December 1992, the statistical analysis leads to two core findings: that the goal of giving the tax-free industry the opportunity to maintain their business for a transitional period has been achieved and that there is, therefore, no need to further raise the value limit of ECU 90.

## CONCLUSIONS

117. In its conclusions of 14 December 1992, the Council invited the Commission „to review the operation of Member States' controls, in particular in relation to the prevention of multiple and repeated sales“.
118. The present report shows that the situation in most Member States is far from being satisfactory. Few Member States have ensured that the system in place allows account to be taken by the tax-free shop operators of previous tax-free purchases by a passenger when that passenger is making further purchases during the same journey. Virtually no Member State has made provision for the tax-free shop operator to be sufficiently well informed of previous tax-free purchases by the passenger to allow use of any part of the tax exemption still remaining. Virtually no Member State has managed to arrange for such information to be transmitted from the airport to the aircraft for subsequent sales on board. Thus, no system has been put in place which can guarantee that the current limits for tax exemption are respected. As indicated in the report, this has clear implications for all Member States since the goods thus exported will be imported tax-free into other Member States where the volume of domestic sales will be reduced as a result, with an accompanying decline in tax receipts.
119. Control of the vendor by the tax authorities generally takes place but doubts can be expressed as to its effectiveness. It seems, indeed, that these controls do not go beyond the control exercised by any warehouse keeper and ensuring only that goods have not left the warehouse or the tax-free area without being recorded, but not involving any check on the conditions for further exemption.
120. The so-called „global accounting system“, if used, is not likely to produce a realistic result as long as it is assumed that each passenger uses his full tax-free purchase allowance.
121. With regard to the control of sea crossings, particularly by ferry, it has to be stressed that not one bilateral agreement between Member States has been notified to the Commission, and only one such agreement seems to exist in practice.
122. This leads to the conclusion that the Member States have not taken very seriously their responsibility for setting up appropriate control mechanisms; they have not even met the minimum standards set by the Council. It confirms the doubts the Commission expressed during the negotiations in the Council that, in an internal market, in the absence of frontier controls, no effective control might be feasible.
123. The lack of sufficient control may lead to distortion of competition not only with regard to the shops selling tax-paid goods but especially between the different means of transport which may or may not provide tax-free sales. This should be a number of concern not only for the Commission but also for the Member States themselves.
124. Furthermore, the practice observed is likely to reduce the Community's VAT own resources base. Both the distorting effects and the revenue implications may lead the Commission to use, when appropriate, its power under the Treaty to ensure a minimum of control.

125. The report also shows that tax-free shops' turnover did not suffer from the new tax regime for tax-free sales. It demonstrates at the same time that the increase in the value limit, on the one hand, was in line with the objectives of the transitional period for tax-free sales and, on the other hand, was, and still is, sufficient to ensure that these same objectives are met in the future. The considerable increase in tax-free sales recorded in certain sectors is likely to be reduced by the introduction of more effective control measures by Member States. Thus, a further adjustment of this value limit, upwards or downwards, is not considered justified.
126. While this situation is of considerable concern, it has to be borne in mind that tax-free sales to intra-Community travellers are due to be abolished in just over three year's time. In such circumstances, it is perhaps understandable that Member States are prepared to live with a less than perfect control system, although the Commission considers that Member States should still seek to tighten their procedures for the remaining period.
127. Moreover, the Commission must underscore its disappointment that, until now, to the best of its knowledge, no appropriate measures have been taken by the operators or by the Member States to prepare for the situation after June 1999, when tax-free sales have to be discontinued in accordance with the Council's decision.

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## **ANNEX 1**

### **QUESTIONNAIRE ON THE NATIONAL CONTROL MEASURES ON TAX-FREE SALES IN INTRA-COMMUNITY TRAVEL**

## QUESTIONNAIRE ON THE NATIONAL CONTROL MEASURES ON TAX-FREE SALES IN INTRA-COMMUNITY TRAVEL

This questionnaire is divided in four sections. The first three sections deal respectively with sales in airports, sales on board aircraft and sales on board ships. Please make, where appropriate, clear distinction between different systems within a section, for example between small and major airports. The last section deals with general questions which relate to the three previous categories.

The answers should allow us to form a view to what degree your control system prevents sales per passenger and per voyage exceeding the limits in value and in quantity laid down in Community law, and should provide the necessary information for the Commission to be able to draft its report to the Council on the operation of these control systems.

Please also add to your answer copies of all laws, administrative provisions or circular letters, public notices, etc. transposing Article 28k of Directive 91/680/EEC and Article 28 of Directive 92/12/EEC, and transposing the guidelines agreed by the Council on 14 December 1992.

### 1. Sales at airports

1. Can you give a general description of the control system applied?
2. In particular, what measures have been taken to avoid multiple sales in different tax-free outlets or repeat sales in one tax-free outlet? What measures have been taken to avoid further sales to transit passengers who already bought in the airplane on the first leg of an intra-Community flight or in the airport of initial departure of that flight?
3. Do you use the boarding card or an equivalent document issued to the traveller for the purposes of your control system to avoid multiple and repeat sales?

If yes,

- What mentions are made on this card?
  - What are the consequences of these mentions? Do they avoid further sales?
  - Can this card or equivalent document be used afterwards by the competent authorities for control purposes?
  - Is there a general distinction on this card between goods subject to the general value limit and goods subject to quantitative limits? In the latter category, is there a distinction made between the several products (cigarettes, strong alcoholic beverages, aperitifs, wines, perfumes and toilet waters)?
4. What measures have you taken to control the functioning of the system? What are the consequences for the vendor if it appears that the rules have not been respected?
  5. Did you introduce a system of global accounting? If yes, what are the underlying principles of this system? What is it intended to show, prove or control?
  6. Detail any special problems, if any, that have arisen in the working of the control system on

national and on Community level, and your appreciation of their importance.

## **2. Sales on board aircraft**

1. Can you give a general description of the control system applied?
2. In particular, what measures have been taken to avoid sales taking place, or to avoid that the sales per passenger and per voyage exceed the value or quantity allowed, in the case that the travellers already purchased tax-free goods in outlets at the airport or on a previous leg of the flight?
3. Do you use the boarding card or an equivalent document issued to the traveller for the purposes of your control system to avoid multiple and repeat sales?

If yes,

- What mentions are made on this card?
  - What are the consequences of these mentions? Do they avoid further sales?
  - Can this card or equivalent document be used afterwards by the competent authorities for control purposes?
  - Is there a general distinction on this card between goods subject to the general value limit and goods subject to quantitative limits? In the latter category, is there a distinction made between the several products (cigarettes, strong alcoholic beverages, aperitifs, wines, perfumes and toilet waters)?
4. What measures have you taken to control the functioning of the system? What are the consequences for the vendor if it appears that the rules have not been respected?
  5. Did you introduce a system of global accounting? If yes, what are the underlying principles of this system? What is it intended to show, prove or control?
  6. Detail any special problems, if any, that have arisen in the working of the control system on national and on Community level, and your appreciation of their importance.

## **3. Sales on board ferries**

1. Can you give a general description of the control system applied?
2. In particular, what measures have been taken to avoid multiple sales in different tax-free outlets on a ferry-boat or repeat sales in the same tax-free outlet?
3. Have you provided for the use of the ticket system of the ferry operator or some other procedure for the purposes of your control system to avoid multiple and repeat sales?

If yes,

- What mentions are made on this ticket?

- What are the consequences of these mentions? Do they avoid further sales?
  - Can this ticket be used afterwards by the competent authorities for control purposes?
  - Is there a general distinction on this ticket between goods subject to the general value limit and goods subject to quantitative limits? In the latter category, is there a distinction made between the several products (cigarettes, strong alcoholic beverages, aperitifs, wines, perfumes and toilet waters)?
4. What measures have you taken to control the functioning of the system? What are the consequences for the vendor if it appears that the rules have not been respected?
  5. Did you introduce a system of global accounting? If yes, what are the underlying principles of this system? What is it intended to show, prove or control?
  6. Have you entered into bilateral agreements with other Member States to ensure adequate control on ferry routes between your country and these Member States?

If yes,

- With what Member States?
  - What measures do they provide?
  - Add a copy of these arrangements.
7. Detail any special problems, if any, that have arisen in the working of the control system on national and on Community level, and your appreciation of their importance.

#### **4. General questions**

1. What measures have you taken to ensure that travellers are notified at tax-free outlets of the relevant quantitative and value limits to be applied? Does the trade also provide publicity and/or advertising? Is this a requirement? Could we see examples of both official and trade publicity please.
2. Did you on any occasion have recourse to the Community provisions on administrative cooperation and mutual assistance? If so, did this provide the desired result? Brief details please.
3. Do you have any comments on the overall approach and application in the Community as a whole?

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## **ANNEX 2**

### **ARTICLES OF COMMUNITY LEGISLATION PERTINENT TO TAX- FREE SALES**

## ARTICLES OF COMMUNITY LEGISLATION PERTINENT TO TAX-FREE SALES

### Article 28k of Directive 77/388/EEC (VAT) (as amended by Article 2 of Directive 94/4/EC)

The following provisions shall apply until 30 June 1999:

1. Member States may exempt supplies by tax-free shops of goods to be carried away in the personal luggage of travellers taking intra-Community flights or sea crossings to other Member States. For the purpose of this Article:
  - (a) *tax-free shop* shall mean any establishment situated within airport or port which fulfils the conditions laid down by the competent public authorities pursuant, in particular, to paragraph 5;
  - (b) *traveller to another Member State* shall mean any passenger holding a transport document for air or sea travel stating that the immediate destination is an airport or port situated in another Member State;
  - (c) *intra-Community flight or sea crossing* shall mean any transport, by air or sea, starting within the territory of the country as defined in Article 3, where the actual place of arrival is situated within another Member State.

Supplies of goods effected by tax-free shops shall include supplies of goods effected on board aircraft or vessels during intra-Community passenger transport.

This exemption shall also apply to supplies of goods effected by tax-free shops in either of two Channel Tunnel terminals, for passengers holding valid tickets for the journey between those two terminals.

2. Eligibility for the exemption provided for in paragraph 1 shall apply only to supplies of goods:
  - (a) the total value of which per person per journey does not exceed ECU 90.

By way of derogation from Article 28m, Member States shall determine the equivalent in national currency of the above amount in accordance with Article 7 (2) of Directive 69/169/EEC.

Where the total value of several items or of several supplies of goods per person per journey exceeds those limits, the exemption shall be granted up to those amounts, on the understanding that the value of an item may not be split;

- (b) involving quantities per person per journey not exceeding the limits laid down by the Community provisions in force for the movement of travellers between third countries and the Community.

The value of supplies of goods effected within the quantitative limits laid down in the

previous subparagraph shall not be taken into account for the application of (a).

3. Member States shall grant every taxable person the right to a deduction or refund of the value added tax referred to in Article 17 (2) in so far as the goods and services are used for the purposes of his supplies of goods exempted under this Article.
4. Member States which exercise the option provided for in Article 16 (2) shall also grant eligibility under that provision to imports, intra-Community acquisitions and supplies of goods to a taxable person for the purposes of his supplies of goods pursuant to this Article.
5. Member States shall take the measures necessary to ensure the correct and straightforward application of the exemptions provided for in this Article and to prevent any evasion, avoidance or abuse.

## Article 28 of Directive 92/12/EEC (excise duties)

The following provision shall apply for the period ending 30 June 1999:

1. Member States may exempt products supplied by tax-free shops which are carried away in the personal luggage of travellers taking an intra-Community flight or sea-crossing to another Member State.

For the purposes of this provision

- (a) *tax-free shops* shall mean any establishment situated within an airport or port which fulfils the conditions laid down by the competent public authorities, pursuant in particular to paragraph 3 of this Article;
- (b) *traveller to another Member State* shall mean any passenger holding a transport document, for air or sea travel, stating that the immediate destination is an airport or port situated in another Member State;
- (c) *intra-Community flight or sea-crossing* shall mean any transport, by air or sea, commencing within a Member State, where the actual place of arrival is situated within another Member State.

Products supplied on board an aircraft or ship during the intra-Community passenger service shall be treated in the same way as products supplied by tax-free shops.

This exemption shall also apply to products supplied by tax-free shops situated within one of the two access terminals to the Channel Tunnel to passengers holding transport document which are valid for the journey between those two terminals.

2. The exemption provided for in paragraph 1 shall apply only to products in quantities which do not exceed the limits, by person per journey, laid down by Community provisions in force in the context of the movement of travellers between third countries and the Community.
3. Member States shall take the measures necessary to ensure that the exemption provided for in this Article is applied correctly and straightforward, and to prevent any possible evasion, avoidance or abuse.



## **Article 1 of Council Directive 69/169/EEC**

*(as amended by Article 1 of Directive 94/4/EC)*

1. Exemption from turnover tax and excise duty on imports shall apply, as regard travel between third countries and the Community, to goods in travellers' personal luggage, if such imports have no commercial character and the total value of the goods does not exceed ECU 175 per person.
2. Member States may reduce this exemption to ECU 90 for travellers under fifteen year old.
3. Where the total value per person of several items exceeds the amount set out in paragraph 1 or the amount fixed pursuant to paragraph 2, as the case may be, exemption up to these amounts shall be granted for such of the items as would, if imported separately, have been granted exemption, it being understood that the value of an individual item cannot be split up.

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### **ANNEX 3**

**"GUIDELINES FOR THE CONTROL OF TAX-FREE SALES IN THE  
COMMUNITY" AS AGREED BY THE COUNCIL OF MINISTERS ON 14  
DECEMBER 1992**

# **"GUIDELINES FOR THE CONTROL OF TAX-FREE SALES IN THE COMMUNITY" AS AGREED BY THE COUNCIL OF MINISTERS ON 14 DECEMBER 1992**

**ECOFIN Council  
14 December 1992**

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**Subject: Guidelines for the control of tax-free sales in the Community**

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At its meeting on 9 December 1992, the Permanent Representatives Committee agreed to suggest that, as an "A" item of the agenda for its meeting on 14 December 1992, the Council adopts the following conclusions:

The Council recalls its view, expressed at the time of adoption of Directive 91/680/EEC and 92/12/EEC, that effective measures are needed at Community level for the proper control of tax-free sales in the Community and the agreement that guidelines would be necessary.

The Council wishes to emphasise the importance it places on ensuring that adequate control systems exist in all Member States to ensure fair and equal treatment for passengers and businesses alike, while also respecting the need to protect the economies of each Member State.

The Council expects each Member State to take all necessary measures to correct any failure of controls which is reported to it as leading to evasion, avoidance or abuse.

The Council considers it essential that each Member State should take appropriate measures to ensure that travellers are notified at duty-free and tax-free outlets of the relevant quantitative and value limits to be applied.

The Council agrees that in establishing the necessary minimum levels of control Member States will respect the principles set out in the Annex of these conclusions.

The Council invites the Commission to review the operation of Member States' controls, in particular in relation to the effective prevention of multiple and repeat sales, in the light of practical experience. The Council urges the commission to report to the Council as soon as possible on the operation of these controls and, if necessary, to propose any appropriate measure for adoption at the earliest possible date and in any event not later than 31 December 1993.

## **Guidelines agreed between the Member States for the control of tax-free sales in the Community**

### **1. Introduction**

The provisions of Council Directives 91/680/EEC and 92/12/EEC authorise, respectively, the continuation of VAT and excise duty-free sales to intra-Community travellers subject to certain conditions until 30 June 1999.

A basic principle of the Community legislation which has to be respected is that individual vendors shall not sell goods VAT and excise duty free in excess of the amounts provided for in the directives in question to individual travellers. In the absence of the possibility for Member States to control such sales at the arrival of travellers in each Member State by virtue of the removal of controls at frontiers the Member States must ensure that VAT and duty-free vendor respect the Community rules relating to the limits applied to such sales.

The provisions relating specifically to excise duties refer to those products which are subject to harmonisation at Community level and to perfumes and toilet waters.

To achieve this objective the control system must encompass the following elements.

These elements are based on the need for the vendors to themselves control their sales to individual purchasers and on the need for the authorities to control sales made by the vendors.

### **2. Vendor control**

- (a) Each individual vendor is only allowed to sell to each individual intra-Community traveller goods up to the maximum value (or amount) permitted by the directives in question. Sales above these thresholds will be liable to VAT and/or excise duties.

To ensure respect of this principle the Member States shall introduce a system whereby the sales by vendors to individual purchasers may not exceed these limits.

- (b) In addition, a global accounting may be undertaken for each individual tax and duty-free sales outlet.
- (c) The Member States will ensure that each vendor keeps accounts and records in a manner that allows the authorities of that Member State to examine and verify the type and quantity of sales by each vendor. This must allow the authorities both to ensure that the sales limits have not been exceeded in individual cases and that the vendors furnish the information necessary to allow the global accounting referred to in (b) above.

### **2.1. Sales at airports and on board aircraft**

For products liable to excise duties, Member States shall, if appropriate, provide for vendors to demonstrate that they have made a sale to an individual traveller on a boarding card or equivalent document issued to each traveller.

### **2.2. Sales on board ferries**

In relation to VAT and duty-free sales on ferries between Member States, the Member States concerned will enter into bilateral agreements to ensure adequate control on ferry routes between them. These bilateral agreements will, in particular, provide for measures to ensure that sales to individual passengers do not exceed the value or quantitative limits set out in the two directives.

For that purpose the Member States will, if appropriate, provide for use of the ticket system of the ferry operator or some other procedure to ensure respect of the limits.

### **3. Application of the Guidelines**

These elements of the guidelines represent a minimum which Member States shall respect in the control of the VAT and duty-free sales limits provided for in Article 28k (5) of Council Directive 91/680/EEC and Article 28 (3) of Council Directive 92/12/EEC.

In addition to the control measure applied by the Member States to ensure the proper control of VAT and duty-free sales the Member States shall, where appropriate, have recourse to the Community provisions on administrative cooperation and mutual assistance.

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## **ANNEX 4**

### **DATA SHEETS ASKING FOR STATISTICAL DATA ON TAX-FREE SALES**

## DATA SHEETS ASKING FOR STATISTICAL DATA ON TAX-FREE SALES

### Return I. Tax-free sales in airports

Please complete this return, indicating the global figures for the main international airports situated in your Member State.

#### 1. Airports concerned

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#### 2. Number of passengers departing from these airports

Destination	1992	1993
Other Member States		
Third territories		
Total		

### 3. Turnover deriving from tax-free sales

Goods concerned <sup>4</sup>	1992		1993	
	Total	Intra-EC <sup>5</sup>	Total	Intra-EC <sup>5</sup>
Alcoholic beverages				
Tobacco				
Perfumes and toilet waters				
Other goods				
<b>Total</b>				

### 4. Number of sales outlets and floor space

	1992	1993
Number of sales outlets		
Number of operators		
Total floor space taken by these outlets		

<sup>4</sup> Distinguish between the different categories of products if the data is available. Otherwise, give global figures.

<sup>5</sup> If available.



## Return II. Tax-free sales on board aircraft

Please complete this return, indicating the global figures for the airline(s) having his (their) primary establishment in your Member State.

### 1. Airline(s) concerned

.....  
.....  
.....

### 2. Number of passengers transported

	1992	1993
Number of passengers transported by this (these) airline(s) on intra-EC flights (departing or arriving in your Member State)		

**3. Total turnover of tax-free sales by this these airline(s) on intra-EC flights  
(departing or arriving in your Member State)**

<b>Goods concerned<sup>4</sup></b>	<b>1992</b>	<b>1993</b>
Alcoholic beverages		
Tobacco		
Perfumes and toilet waters		
Other goods		
<b>Total</b>		

### Return III. Tax-free sales on board ferries

Please complete this return, indicating the global figures for the ferry operators, having their primary establishment in your Member State, carrying out regular sea crossings between your Member State and other Member States.

#### 1. Sea crossings and operators concerned

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#### 2. Number of passengers transported

	1992	1993
Number of passengers transported by these ferry operators on regular sea crossings between your Member State and other Member States		

**3. Total turnover of tax-free sales realised by these operators on regular sea crossings between your Member State and other Member States**

<b>Goods concerned<sup>4</sup></b>	<b>1992</b>	<b>1993</b>
Alcoholic beverages		
Tobacco		
Perfumes and toilet waters		
Other goods		
<b>Total</b>		

## Return IV. Tax-free sales in ports

Please complete this return, indicating the global figures for the sales outlets in ports in your Member States, accessible before sea crossings to other Member States.

### 1. Ports concerned

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### 2. Number of passengers departing from these ports

	1992	1993
Number of passengers departing from these ports to other Member States		

**3. Total turnover of tax-free sales to passengers departing to other Member States realised in these sales outlets**

Goods concerned <sup>4</sup>	1992	1993
Alcoholic beverages		
Tobacco		
Perfumes and toilet waters		
Other goods		
<b>Total</b>		

**4. Number of sales outlets and number of operators**

	1992	1993
Number of sales outlets		
Number of operators		

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## **ANNEX 5**

### **THE VENDOR CONTROL SYSTEMS APPLIED IN THE VARIOUS MEMBER STATES ACCORDING TO THE REPLIES TO THE COMMISSION QUESTIONNAIRE**

# **THE VENDOR CONTROL SYSTEMS APPLIED IN THE VARIOUS MEMBER STATES ACCORDING TO THE REPLIES TO THE COMMISSION QUESTIONNAIRE**

## **INTRODUCTION**

The first step of the initiatives from the Commission has been to draft a questionnaire dealing with the application of the vendor control system and to send this questionnaire to the Member States, and to professional organizations.

Member States' replies to the questionnaire have been discussed and clarified by the ad-hoc Working Group on tax-free sales in its meeting of 28 June 1993.

The presentation made below endeavours both to summarize Member States' replies to the questionnaire and the clarifications made to their replies in the said meeting.

The criteria for doing so are the guidelines agreed between the Member States for the control of tax-free sales in the Community from ECOFIN Council the meeting on 14 December 1992.

The overall approach of "vendor control" can be recognized in an extract of these guidelines:

"Each individual vendor is only allowed to sell to each individual intra-Community passenger goods up to the maximum value (or amount) permitted by the directives in question. Sales above these thresholds will be liable to VAT and/or excise duties.

To ensure respect of this principle the Member States shall introduce a system whereby tax-free sales by vendors to individual purchasers may not exceed these limits."

From this follows that the vendor control system as such has two checks: the first by the vendor himself, and secondly the check of the administration whether the vendor's system works correctly.



## **CHAPTER 1**

### **SALES AT AIRPORTS**

#### **Section 1. Controls carried out by the vendors themselves**

The Council decided to define the principles to be respected by Member States with a view to ensure a minimum needed for the appropriate controls.

It is the responsibility of the vendors to sell goods tax-free to intra-Community passengers only within the limits in value and quantity allowed by the appropriate directives. Due to the specific character of excise goods mainly concerned in this field, the Council has decided to identify the ways of checking such purchases.

#### **General description of the vendor control systems applied in the Member States**

- Two Member States (DE and LU) apply the vendor control system only in the excise field. VAT-free purchases are not possible.
- In 11 out of the 12 Member States, the control system by the vendors is based on the boarding card or equivalent transport document which passengers must present at the operator till.
- If the immediate destination is situated in another Member State, the vendor should restrict the sales to the relevant quantitative and value limits.
- Once a sale is made, the boarding card is stamped by the vendor aiming to avoid repeat purchases (purchases of the same products in the same sales outlet) and multiple purchases (purchases of the same products in several sales outlets).
- However the details of the procedure differ from Member State to Member State.
- In most Member States the stamp on the boarding card only gives an indication that a tax-free sale has been made.
- In one Member State (PT) the sales ticket issued indicates the quantity and value of the goods sold. The sales ticket is attached to the boarding card allowing subsequent vendors to verify if further purchases are still allowed.
- In three Member States (DE, EL and IT) the annotation on the boarding card or equivalent document provides an indication of the value and/or quantity of the goods sold.
- In the latter category one Member State (DE) makes a distinction between the several products (cigarettes, strong alcoholic beverages, wines, others).
- One Member State (NL) considers that no particular measures in addition to the general control mechanism are needed to control repeat and multiple sales.

The Netherlands is not convinced that a stamp on the boarding card would increase the efficiency of the control system.

Three reasons for the non-use of the boarding card as control system are put forward :

1. Sometimes the boarding card is no longer used for embarkation;
2. the annotation on the boarding card merely increases the administrative burden for shopkeepers and does not lead to a more efficient control system;
3. experience has taught that in practice repeat sales are rarely carried out at airports.

As the use of the boarding card had been found inappropriate, the Netherlands introduced a global accounting system as control system i.e. a control system to ensure that the overall quantitative and value limits are not exceeded per flight. In other words, the Netherlands focus on the control of the vendors by the responsible authorities (see Section 2 instead).

- Not a single Member State has given notice of measures taken by them to avoid further sales to transit passengers, i.e. passengers who already bought on board the aircraft on the first leg of an intra-Community flight or at the airport of initial departure of that flight.
- Neither has any Member State indicated that it makes use of the boarding card for a posteriori control purposes.

## Conclusion

From the Member States' replies to the questionnaire and the discussions and clarifications made to the replies by the Member States in the ad-hoc Working Group on tax-free sales, the following conclusion can be drawn:

11 out of the 12 Member States are convinced that the stamping procedure of the boarding card should be the minimum level of vendor control.

The position of the Netherlands in this field seems to be inadequate. The alternative to the stamping of the boarding card, consisting in only applying a global accounting does not meet the need for ensuring control of individual tax-free purchases.

Although the use of an annotation on the boarding card is not compulsory, the guidelines prescribe that Member States "shall introduce a system whereby the sales by vendors to individual purchases may not exceed the relevant limits", and that in addition a global accounting system may be undertaken.

Therefore, the global accounting system cannot replace Member States' obligation to introduce a system avoiding repeat and multiple sales by individual purchasers above the limits laid down in Community law.

A majority of Member States are of the opinion that the stamping procedure of the boarding card does not offer sufficient control possibilities, unless the annotation on the boarding card provides an indication of the value and quantity of the goods sold. The latter has already been put into practice in Greece and Italy while Germany specifies the category of excise products sold.

Indeed, a vendor control system which is restricted to a single stamp on the boarding card has its weaknesses; the stamp reveals "something" has been purchased, not the quantity nor the value of the goods.

However, these Member States stress that a more severe control system than the "minimum level"

of vendor control would only be acceptable if it is applied on a uniform basis in all the Member States.

The opposite would give rise to complaints of distortion of competition.

## **Section 2. Control of the vendors by Member States' authorities and consequences for the vendor in cases where the rules are not applied**

### **General description of the control of the vendors by the Member States' authorities**

- Basically, all Member States apply the same control procedures, but they attribute to them a different respective importance. The control usually focuses on the operator's bookkeeping. In some Member States the control is based on a computerized accounting programme held by the tax-free shops. Generally inspections on site and (more or less regular) random controls (of the vendors and their customers) are also carried out.
- In most Member States it appears that the vendor is responsible for any liability to duties or VAT and penalties imposed by the competent authorities.
- In 6 of the 12 Member States the tax-free shops are approved customs and/or excise warehouse keepers. Accordingly they are subject to the prescribed bookkeeping rules which usually require that a follow-up of the entries and the exits of goods into and out of the warehouse is possible.
- In Denmark every vendor has to be approved by the authorities which implies that he agrees to appropriate bookkeeping rules (sales and stock).
- All Member States have provided for some kind of penalty for the non-respect of the vendor control rules by an operator. In 9 out of the 12 Member States the licence of the concessionaire can be (temporarily or permanently) withdrawn in case of gross and/or persistent abuse. In Greece sales to persons not entitled to purchase free of tax (e.g. crew members) could give rise to prosecution based on the provisions on contraband trade.
- The regularity of controls ranges from weekly to exceptionally. Most Member States' authorities carry out regular monthly controls and additional controls whenever deemed to be necessary.
- In 7 of the 12 Member States a global accounting system is applied in order to get an idea whether the operators generally respect the tax-free sales conditions or not, or - in other words - in order to ensure customs the total sales of excisable products do not exceed the total allowances for any particular flight and to calculate the vendor's VAT liability on excess sales. These systems differ from each other remarkably: they are based on a daily or on a monthly summary of sales, they contain a certain amount of information (possibly: date, flight number, code, quantity and value of the goods, provided to each passenger), they are submitted to the authorities automatically by means of a computer network or simply handed over. In Italy a global accounting control system is still under consideration.

## **CHAPTER 2**

### **SALES ON BOARD AIRCRAFT**

#### **Section 1. Controls carried out by the vendors themselves**

##### **General description of the vendor control systems applied in the Member States**

- Generally speaking, Member States do not make use of the boarding card or equivalent document for the control of sales on board the aircraft. According to the Member States, this follows mainly from the fact that, in most cases, the passengers do not possess it anymore on board and that most airlines do not find it worthwhile to introduce a suitable control card (voucher system) which would have to be carried by passengers for the duration of their journeys.
- Notwithstanding the non-use of the boarding card or any other document such as a voucher system, Member States stress that in their opinion the measures taken are sufficient to avoid unjustified sales on board aircraft.

These measures are the following:

- the limits are mainly enforced by crew instructions and leaflets on board making passengers aware of the relevant limits (e.g. ES, IRL, IT, NL, PT and UK);
  - sales lists per voyage are made or the sales are recorded on PC mentioning the name and/or the seat number of the passengers who purchased tax-free (e.g. FR and UK);
  - or, the agreed limits are enforced by a system of preliminary orders. If the passenger has made a preliminary order of goods, his boarding card is stamped when it is handed over to the passenger, to avoid him making tax-free purchases both on board the aircraft and within an airport.
- As to the question whether Member States apply a control system to link on board sales with sales in tax-free shops within the airport the following can be said:

The absence of such a control link, resulting in a lack of co-ordination between sales at airport and sales on board, makes it possible that the agreed limits are de facto respected per tax-free outlet and not per voyage.

It appears that Member States do not apply a vendor control system making the link between sales at airports and on board the aircraft, thus they have not taken measures to avoid multiple sales (between the two subsequent places of sale at the airport and on board aircraft).

The exception to the rule is Denmark where airlines operating charter flights apply a pre-ordering system (the boarding card is stamped before the goods are delivered on board).

Moreover, Member States find that a vendor control system linking both sales at airports and on board sales is superfluous having regard to the limited risk involved (e.g. only limited amounts of tax-free goods can be carried on board aircraft, turnover from on board sales is relatively

low, time constraints involved) and the practical difficulties both financially and administratively to install such a control system.

Member States indicate that they can live with a system whereby the value and quantitative limits are respected with regard to actual sales on board aircraft.

- In accordance with the Community provisions, Member States do, at least in principle, not permit tax-free sales to crew members engaged in intra-Community flights.

## **Conclusion**

All Member States advise their domestic airlines to respect the limits even when a control system is absent.

The majority of Member States is of the opinion that the specific situation of on board tax-free sales prevents the (need for) the use of a boarding card or voucher. In general practical considerations lie at the base of this reasoning. It must be stressed nevertheless that the end result seems to be a weaker control mechanism for on board tax-free sales than for tax-free sales at the airport while the absence of a link between the places of sale constitutes a further weak spot for this kind of traffic.

Member States consider sales on board aircraft in excess of the limits less important than exceeding the limits at airports, taking into account the limited amounts of goods which can be carried on board aircraft, and the time available for purchases.

No specific measures have been taken to avoid sales exceeding the limits in the case that a passenger already purchased at the airport (multiple purchases).

With the exception of one Member State, a vendor control system linking both on board sales and sales at airport is thus not available.

Some Member States find the introduction of a control system linking both sales on board aircraft and sales at airport useful, but not worthwhile having regard to the small risks involved and the administrative difficulties such a system would involve.

## **Section 2. Control of the vendors by Member States' authorities and consequences for the vendor in cases where the rules are not applied**

### **General description of the control of the vendors by the Member States' authorities**

- Basically the system of control of the vendors on board aircraft is the same as that applied for sales at airport (focus on the bookkeeping, status as approved customs/excise warehouse, random and a posteriori controls, use of a global accounting system etc.). It is usually the airline which is responsible for any liability of taxes on excess sales.
- In Greece the control is based on the comparison of two filing cards established by the airline, i.e. a first filing card of goods transported by plane itemizing a description of the goods, the code, quantity and the price of each product and a second filing card established after the return

voyage of the plane itemizing alongside details of the first filing card, the quantities of the goods sold during the flight. The filing card shows the quantity of goods available at the moment of departure and the quantity left after the return leg.

- In Spain the control is based on the bookkeeping of the airlines, whose bookkeeping system allows a distinction between the different sorts of revenue (which makes it possible to separate on board sales from the sales at airport). Non-respect of the relevant limits gives rise to fines to which the vendor is liable.
- In France the vendor should, in support of his bookkeeping, preserve the embarkation tickets indicating the flight plan and issued when the goods are put on board and the sales lists of goods sold tax-free established per voyage. Those lists contain the names of the passengers who purchased free of tax.
- In Ireland the supplier of duty free products to the airline as well as the airline itself may be subject to penalties including withdrawal of the facility to stock/sell duty free goods.
- In Luxembourg no airline company is supplying goods tax-free on board its aircraft departing on intra-Community flights from Luxembourg.
- Most Member States undertake appropriate measures for controlling stocks. In the Netherlands the control is centralized on the provisioning companies which are forbidden to remove more out of stock than actual purchasing behaviour allows.
- In Italy (like in EL and NL) authorities monitor vendors by making a posteriori global accounting control. The global accounting system makes it possible to determine the total amount of sales on board aircraft, the amount per individual passenger is not subject to a control as such.

## **CHAPTER 3**

### **SALES ON BOARD FERRIES**

#### **Section 1. Controls carried out by the vendors themselves**

The two main considerations of the Council when adopting the guidelines for the control of tax-free sales on board ferries were:

- higher potential revenue risks and abuses compared to sales on board aircraft as passengers have more time available to make tax-free sales on board ferries;
- that the controls should be based on bilateral arrangements between Member States.

#### **General description of the vendor control system applied in the Member States**

- Generally speaking, the control system applied on board ferries does not greatly derogate from the one applied in the tax-free shops located at the airport.

Unlike sales at airports where the boarding card is marked once a sale is made, on board ferries it happens more frequently that rather than a boarding card or equivalent travel document, a separate voucher (e.g. duty-free shopping pass) is issued containing information with regard to (especially) the quantitative limit.

The voucher is marked at the moment of the sale. A further sale of goods of the same category is not allowed except where the passenger can prove, on the basis of the receipt of his former purchase, that the limit has not yet been reached.

With regard to the goods subject to the value limit the control measures are often less strict.

- None of the Member States has indicated that it uses the boarding card or voucher for subsequent control purposes.
- In Member States which do not make use of the boarding card or equivalent document e.g. vouchers or coupons, the agreed limits are mainly enforced by crew instructions and controlling stocks.

On short distance routes, which nevertheless have a large number of legs and passengers (like the Dover-Calais passage), vouchers are rarely used.

On the Dover-Calais route controls are carried out in the sales outlet combined with a subsequent accounting control.

No voucher system is applied having regard to the limited passage time and the high density of travellers. An agreement between the authorities and the operators is reached in order to avoid repeat sales whereby the latter undertook not to sell above the limits.

#### **Bilateral arrangements**

- Recognizing that the Council Guidelines state that in relation to VAT and duty-free sales on

ferries between Member States, the Member States concerned will enter into bilateral arrangements to ensure adequate control on ferry routes between them, Member States were asked whether they entered into bilateral arrangements and to specify the vendor control system contained therein.

- Although several Member States replied that they are negotiating bilateral agreements, it appeared that at the time the second meeting of the ad-hoc Working Group on tax-free sales was held (19 September 1994), thus 20 months after the date the Guidelines were agreed, only one formal agreement had been signed.

Moreover, the only arrangement agreed between Denmark and Germany only deals with excise duties leaving aside the VAT aspects. This is why it is no appropriate example for the other arrangements to be concluded.

- During the abovementioned meeting, Member States were asked to provide the Commission with copies of any formal agreement to be reached, so that the Commission would be able to inform the other Member States.

Until today not a single formal bilateral agreement has been received by the Commission.

To the Commission's knowledge, merely draft proposals for bilateral arrangements were sent out by the United Kingdom authorities at the end of July 1994 to all Member States with which the United Kingdom has ferry links.

## **Section 2. Control of the vendors by Member States' authorities and consequences for the vendor in cases where rules are not applied**

### **General description of the control of the vendors by the Member States' authorities**

- Basically the system of control of the vendors on board ferries is the same as that applied for sales at airports (focus on the bookkeeping, status as approved customs/excise warehouse, random and a posteriori controls, use of a global accounting system etc.). It is usually the ferry company which is responsible for any liability of taxes on excess sales.
- In Greece monthly or exceptional controls (as judged necessarily) are based on a recapitulative statement of sales effected per voyage, per product, per quantity and per value. The statement is compared with the sales tickets delivered by the tax-free outlet to each passenger and the number of passengers.
- In Ireland the control is based on detailed stock records, duplicate records of each sales order, a monthly statement of total passengers carried and the volume of goods sold to them per product category, monthly stock accounts in respect of each product category.
- In the Netherlands the control takes place by tests at random during the voyage and on the basis of the administration kept by the ferry company.
- Portugal appears to be the only one of the 12 Member States where this kind of transport is of no significant importance.



- In the United Kingdom the authorities apply the same measures to control the functioning of the vendor on the Dover-Calais route as for sales at airports and on board aircraft (including the use of a global accounting system). The other operators keep records and accounts which can be examined at any time.

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## **ANNEX 6**

### **THE VENDOR CONTROL SYSTEMS APPLIED IN THE VARIOUS MEMBER STATES ACCORDING TO THE COMMISSION'S SERVICES' MISSIONS TO MEMBER STATES**

# THE VENDOR CONTROL SYSTEMS APPLIED IN THE VARIOUS MEMBER STATES ACCORDING TO THE COMMISSION SERVICES' MISSIONS TO MEMBER STATES

## CHAPTER 1 OVERVIEW

### Section 1. Preliminary Remarks

In July 1994 Commission officials from DG XXI undertook fact finding missions to nine Member States (BE, DE, DK, EL, ES, FR, IT, NL and UK)

- in order to complete the information given in questionnaires and the statements of the international organizations involved and
- in order to examine the proper functioning of the appropriate vendor control systems.

Therefore, the focus of the visits was mainly on the technical aspects of applying a certain vendor control system in practice.

Usually, these missions included meetings with the competent national authorities, the airport or port authorities, contacts with operators of tax-free shops and a visit on site.

### Section 2. Differences of the systems applied

Obviously the various Member States have provided for some system of vendor control. However, there are major differences in the systems applied. These differences can be outlined as follows:

- Some Member States (like EL) do not allow sales above the limits (although VAT will be accounted for the sales exceeding the limit), some Member States do allow such sales (ES, FR and NL), while accounting for VAT.
- Some Member States tolerate the co-existence of tax-free shops and tax-paid shops in the appropriate sales areas (ES, FR and IT), others do not (EL).
- Some Member States give crew members the opportunity to complete tax-free purchases, some do not. In the Netherlands there is a so-called prepackaging system only for crew members; in Germany only crew members from non-German airlines are allowed to buy tax-free goods.
- In some Member States there is only one company running tax-free shops on the ground (EL: airports, harbours; ES: airports), in most there are a few companies doing this business.
- In some Member States the companies running the tax-free shops are state-owned or (partly) state-controlled, in others they are entirely private.
- In some Member States appropriate software and computer systems have been developed

(either by the operators or by customs) in order to ensure the proper functioning of the vendor control system applied, whereas others fully rely on "traditional" control procedures. Where computer systems for the shopkeepers are installed they are in some countries linked to the customs network and in others not.

- In most Member States there is no link between the sales on ground (of the airport) or in the harbour and the sales on board aircraft or vessel, in some this link exists at least partly (DK and UK).
- Random controls are carried out only in some Member States. One Member State (NL) entrusts a private firm with the task of carrying out controls concerning the quality standards, the attitude towards customers, the information given to passengers and the respect of tax-free limits.
- There seem to be major differences as far as the sanctions are concerned when the limits for tax-free sales respectively purchases are exceeded.

### Section 3. Common problems

The vendor control system is based upon the self-restraint of the vendors when carrying out their sales. It is obvious that from this (in a way paradoxical) situation problems will arise, all the more so as the costs for the running of a tax-free shop are high and as the costs for presenting the luxury goods imposed by their producers are also elevated.

The methods of control usually apply only to *one shop* so that repeat purchases in other shops are possible. Moreover, there is usually no link between the sales in the tax-free shops and the sales on board aircraft. The control procedures themselves rely on the traditional methods as supervision of agreed customs warehouses, taking stock (in order to establish an inventory of the goods in the tax-free shops), control of declarations, listing of the sales on board aircraft. All of these procedures are in most cases carried out a posteriori. Apparently there is no (or only a scarce) real system of global control.

Passengers usually get information about the *quantitative limits* for tax-free purchases; the relevant information is given by appropriately posted bills or in the price lists. For the most part the information about the *value limits* in force is less clear, sometimes even inexistent or neutrally indicating that there are some regulations to respect but not mentioning their content.

The further development of the sector, which appears to take place here and there, does not take into account the provisions of the Council which are directed only at temporary maintenance of the activities of the tax-free sales outlets existing in 1993.

On the contrary

- new forms of tax-free sales have been introduced (for instance: special arrangements that contain sales of the air-ticket, accommodation and a "package" of tax-free goods; "pre-packing-systems");
- some (already existing) sales areas have been enlarged;
- some tax-free shops have extended the range of goods offered (electrical products, radios,

high-quality textiles etc.); and

- some new tax-free and tax-paid shops have been opened or are envisaged for the near future.

At present, it is difficult to ascertain if this development only shows the gradual and necessary change to a situation in which the sector of tax-free sales adapts and prepares itself to a situation where it is based upon tax-paid sales or whether it is aimed at strengthening the existing position (economic importance of the sector, investments made etc.).

## **CHAPTER 2**

### **FINDINGS FOR THE VARIOUS MEMBER STATES**

#### **Section 1. Belgium**

##### **Preliminary remarks**

The mission was bound for Zaventem Airport in Brussels and Oostend (ports); it included meetings with the Customs and Tax authorities, with representatives of the "Brussels Airport Terminal Company", of an important private company running tax-free shops and of SABENA Airlines. Moreover there was a presentation of the control procedures presently in force at Zaventem. It has to be noted that an extension of the airport infrastructure (including shop premises) was, at the time of the mission, going on.

##### **Zaventem Airport**

##### **Controls carried out by the vendors themselves**

Operators stamp the air-ticket of their customers without further specification of the purchases made. Appropriate baskets at the cash-desk indicate the quantitative limits which have to be respected. The price tags in the tax-free shops usually show both the tax-free and the tax-paid price of the goods; thus, the customer becomes aware of the VAT or excises he will pay by exceeding the value limit of ECU 90.

Sales to crew members are not allowed on intra-Community flights. However, a special "crew shop" exists that is run for supplying the airlines and which is not under the control of the airport authorities.

As far as sales on board aircraft are concerned, again, the Belgian operators have to obtain the status as an agreed warehouse for customs and fiscal purposes. These warehouses are closely monitored by the customs authorities. On board aircraft, SABENA applies a computerized system which ensures that Belgian VAT is calculated for purchases exceeding the value limit of ECU 90. Thus, Belgian VAT is calculated for, even if the flight starts in another Member State. The appropriate brochures indicate the tax-free price as well as the tax-paid price. A copy of the cash-receipts issued on behalf of the sales on board aircraft is handed over to the customs. There is no link between the sales completed on board aircraft and those carried out on the ground at the airport.

##### **Control of the vendor by the Member States' authorities**

In order to get the - compulsory - license to run a tax-free shop from the airport authorities operators have to obtain the status of an agreed customs (and VAT/excises) warehouse for every outlet.

The control of the vendor by the customs authorities is mainly carried out by the customs authorities who are empowered to do so by the VAT administration; officials from the VAT department intervene only every three to five years. There is no global accounting system for control purposes. Instead, controls are based on the bookkeeping of every operator and the appropriate customs documentation (invoices, cash-receipts indicating the customer's flight

number, listing etc.). From time to time, random controls are accomplished by customs officials.

### **Special problems brought up during the visit**

According to the information given by the Belgian authorities no major abuses were to be ascertained up to the moment of the visit. Only airlines from third countries seem to have difficulties enforcing the appropriate limits, especially on the intra-Community leg of flight coming from and/or bound for a third country.

Operators are planning to establish new forms of selling, such as "pick-up"-arrangements (customers order the goods when they leave the country and receive them when they return) and tax-paid sales on arrival. Representatives of the "Brussels Airport Terminal Company" and of an important private company running tax-free-shops pointed out that they are about to reorganize their business in order to adapt to the new arrangements of vendor control (modification of shop-facings, re-determination of the sale-surface per product, diversification of products offered, new sales forms).

Although exact figures were not available for every product and distribution channel, it appears that - notwithstanding an increase in passenger traffic - the turnover from tax-free sales has considerably decreased since the introduction of "vendor control".

According to the vendors, passengers usually show little understanding for the fact that limits are applied on intra-Community travel and not on third country travel; moreover, they often mix these limits up with the "TTC"-limits applied for tobacco and alcoholic products in the Belgian road traffic.

### **Harbours and railway stations**

Only the vessels of the Belgian ferry company (Régie Maritime Transport, i.e. Oostend Lines) are controlled by the Belgian authorities; the tax-free-shops are run by a private company. The main means of control is the boarding card. It is foreseen to improve the control procedures by stipulating an appropriate co-operation agreement with the British authorities. Anyway, mobile control task forces have found out that abuses of the tax-free sales arrangements have taken place in the port of Oostend.

## **Section 2. Denmark**

### **Preliminary remarks**

The mission included meetings with officials of the Ministry of Taxation in Copenhagen and with the customs authorities at the airport of Copenhagen, visits on site and informal contacts with operators of tax-free shops as well as a meeting with customs officials in Nyköping and - as visit on site - a ferry crossing from Rødbyhavn in Denmark to Puttgarden in Germany.

The evaluation of the latter passage is based on informations given by customs officials in Nyköping (which are responsible for the application of the vendor control on board the ferry) and on a ferry crossing which was made during the visit. A normal ferry crossing usually lasts one hour. Most passengers seem to take this trip only for the purpose of buying tax-free goods. There are 44 such crossings in both directions every day.

### **Copenhagen Airport**

#### **Controls carried out by the vendors themselves**

In the only duty free outlet existing at Copenhagen Airport the passengers have to show their boarding cards at the control desk. The vendor puts a stamp on the boarding card, thus indicating that a sale has been made. The nature of the products sold is not indicated. For sales of goods subject to the value limit and exceeding this limit, VAT is accounted for by the vendor and indicated at the receipt. There is however no price difference for the client. The control of the sales is linked to the controls of the sales on board aircraft for charter flights, but only for charter flights. A specific system of preliminary orders is applied to flights from Copenhagen Airport. According to this system the tax-free goods are delivered on board. Therefore the passenger's boarding card is already stamped before he receives the tax-free goods he has ordered.

#### **Control of the vendors by the Member States' authorities**

The control of the vendor by the customs authorities does not contain specific random controls of purchases made by the travellers. However, random controls are carried out at the cash receipts in order to check whether or not individual passengers exceed the limits, and on the crew members returning from intra-Community flights (where tax-free sales are not allowed). There is no real global accounting system applied.

#### **Special problems brought up during the visit**

Among the other issues having been discussed during the meetings two need to be pointed out explicitly: Denmark has established an agreement with Sweden and Norway in order to limit tax-free sales up to the limits applicable on importation in these states. SAS authorities complained about unfair competition from third country authorities that would not respect the limits on the intra-Community leg of a flight from a third country via Denmark to another Member State.



## **The ferry between Rödbyhavn (Denmark) and Puttgarden (Germany)**

### **Controls carried out by the vendors themselves and control of the vendors by the Member States' authorities**

When passengers go on board, they receive a control card. This control card mentions two types of goods (spirits and tobacco). In Denmark the date is not mentioned, in Germany it is. The use of this control card is due to an oral agreement of the local authorities of both countries. In the tax-free shop on board the ferry the control card is stamped in the appropriate box when alcoholic beverages over 22% or tobacco products are sold. It appears that the limits per passenger were generally accepted although there are no particular measures to monitor sales of products other than spirits and tobacco. From time to time, custom officials carry out random checks on the sales tickets.

Danish residents not leaving Denmark for more than 36 hours are supposed to fill in a "self-declaration" form indicating the quantities of goods acquired which exceed the Danish limits applying to them. The number of such "self-declarations" is rather limited.

## **Section 3. Germany**

### **Preliminary remarks**

The mission comprised a visit on site at Hamburg Airport (including contacts with the operators of tax-free shops) and a meeting with German officials at the Customs Office of Hamburg Airport.

### **Controls carried out by the vendors themselves**

The vendor control applied by the vendors themselves works as follows: The passenger has to show his boarding card at the cash-desk. A stamp is put on the boarding card; this stamp is divided in four parts, respectively for alcoholic beverages, tobacco products, perfumes and goods subject to specific German excise duties. The appropriate part is marked by the vendor who will also enter the flight number in the cash register. A separate cash receipt is issued per boarding card. When the mission took place, the software used in the shops was due to be changed in order to prevent the issue of cash-receipts for quantities exceeding the limits (as used in EL).

One of the main particularities of the German system is that sales of all goods (including those subject to a quantitative limit) to intra-Community passengers are not exempt from VAT. Sales on board aircraft and ferries are exempt from VAT within the value and quantitative limits. Prices at the airport are however the same for intra-Community travellers and passengers to third countries. VAT on sales to intra-Community passengers is accounted for by the vendor on the basis of the cash-receipts that mention the flight number. There is no link made between sales on board and sales at the airport. Sales to crew members of non-German airlines on intra-Community flights are allowed and carried out by the catering firms.

### **Control of the vendor by the Member States' authorities**

The control of the vendor by the customs authorities does not make use of a real global accounting system. Random controls are carried out on the cash receipts in order to check whether individual passengers did exceed the limits. No abuses have been established. In 1993 the turnover from tax-free sales at Hamburg airport decreased significantly in comparison to 1992, although the passenger traffic increased slightly.

## **Section 4. Greece**

### **Preliminary remarks**

The mission comprised meetings with the Customs authorities (from the Ministry of Finance), with representatives of the "Hellenic Duty Free Sales" (HDFS) and contacts with operators of appropriate shops as well as a visit on site. The HDFS is a state-controlled private body which includes all duty-free shops in Greece but one situated at the border to (former) Yugoslavia. In total, there are 22 tax-free shops in Greece, at airports, ports and at frontier stations. There are no tax-free sales on board cruise-ships within Greece.

### **Controls carried out by the vendors themselves**

At the airport of Athens, vendors make use of a computer system designed to establish a blocking for unjustified sales. HDFS has developed this system in collaboration with the tax authorities. The operators enter the destination, the flight-number and the passenger's seat in the cash-register. If the threshold (value or quantitative) is passed, repeat sales to the same customer are "blocked up". If the customs authorities wish so, the centralized computer provides for a daily outprint listing of all sales carried out.

Since they have no boarding card crew members do not have an opportunity to buy tax-free goods.

There is no link between the sales in the tax-free shops and the sales on board aircraft. Nevertheless, the latter are duly controlled by establishing a detailed listing of the goods sold on board aircraft. According to the Greek authorities these sales are anyway rather limited (due to the time and space restrictions on such a flight).

The same scheme of control as described above is mutatis mutandis applied as far as sales on ships (apart from cruises) are concerned.

### **Control of the vendors by the Member States' authorities**

Customs officials accomplish detailed controls on a monthly basis; tax controls take place every three to four months. Excise duties are constantly monitored by the customs in the agreed customs warehouse where the goods are sold.

### **Special problems brought up during the visit**

During the meetings, the operators of the tax-free shops complained about the major investments that were necessary in order to implement the computer system described above. Passengers usually show little understanding for the necessity of a sales limit and of the appropriate controls. Moreover, the control procedures applied slow down the passage at the cash-desks. As a result of all this, the annual turnover of the tax-free shop had decreased significantly although the number of passengers had increased.

## **Section 5. Spain**

### **Preliminary remarks**

The mission to Spain was bound for the airport of Palma de Mallorca via the airport of Barcelona. The mission comprised meetings with representatives of ALDEASA, the state-controlled private enterprise holding the license for tax-free sales at all Spanish airports, with representatives of an important charter flights company, with the airport and customs authorities at Palma as well as visits on site in Palma and - shortly - in Barcelona.

Palma was chosen as destination of the visit because it is a very important (mainly charter flight) airport for holiday traffic with about 12 million passengers every year. About 96% of the tax-free sales at this airport are carried out in the airport centre.

### **Palma de Mallorca**

#### **Controls carried out by the vendors themselves**

The vendor control system applied by the operators works as follows: in the tax-free shop passengers have to show their boarding card which will be stamped with a simple rubber mark of the company running the tax-free shop. The operator informs his clients about the existing limits; for quantitative limits particular baskets are installed at the cash-desk. Every operator participates in a computer net linked to the cash-registers that "blocks up" sales to passengers which would exceed the appropriate limits. This system is however not linked to the airport authorities' computer system (whereas the system applied by the "normal" shops is). There is no link between the sales on board aircraft and at the airport.

Crew members have no possibility to carry out tax-free purchases. On board aircraft there is no control of sales (except the overall listing). No detailed information concerning the tax-free sales on ferries was available.

#### **Control of the vendors by the Member States' authorities**

The control of the vendor by the customs authorities is mainly based on the measures undertaken for customs and fiscal purpose (taking stock in the agreed customs warehouse, declarations, listing of the sales on board aircraft). On a yearly basis detailed controls take place as far as the company stocks are concerned. There are no specific random controls.

#### **Special problems brought up during the visit**

According to the operators and the airport authorities the changes to come into effect in 1999 will not affect the turnover in the (then no longer tax-free) shops at the airport if an adequate new price policy will be applied and if the partition of the profits between producers, airport-authorities and traders will be re-determined.

Some problems have been brought up during the meetings with the airport authorities and the operators:

- Special arrangements (mainly offered by certain charter flight companies) contain sales of the air-ticket, accommodation and a "package" of tax-free goods. This system would have to be

considered in terms of distortion of competition.

- Travellers usually show little understanding for the restrictions imposed on them. The employees in the tax-free shop find their job increasingly difficult to carry out.
- Some charter flight airlines apply more and more so-called "prepackaging"-systems (see Section 2: Denmark).
- The airport of Palma de Mallorca was, at the time, being extended and the range of goods sold in tax-free shops has been expanded.

## **Barcelona**

The visit on site at the airport in Barcelona showed that the application of the vendor control system still creates certain difficulties. In some cases, the operator did not ask for the boarding card. Thus, the distinction between the situation in which goods to be sold tax-free and the situation in which they are subject to normal taxation was not always clear neither to the vendor nor to the client.

## **Section 6. France**

### **Preliminary remarks**

The mission was bound for the airport Paris-Orly and comprised a meeting with French Customs officials, contacts with the operators of tax-free shops and a visit on site.

### **Controls carried out by the vendors themselves**

In order to buy tax-free goods the passenger has to show his boarding card and the operator will verify destination, flight-number and identity of the passenger. Nevertheless, it appears that by this procedure the passenger is not prevented from repeat sales in another of the various tax-free shops at Orly. The cash registers are not linked to a centralized computer. Sales to crew members are not allowed on intra-Community flights nor on third country flights.

### **Control of the vendor by the Member States' authorities**

The tax-free shops at the airport have to apply for a license in order to start their business. They will obtain this license only if they accept an agreement to act as an agreed customs warehouse for fiscal and customs purposes.

On demand, the customs authorities will get a listing of the weekly sales per shop. A kind of audit control is established every half year. As far as excises are concerned the usual measures provided for in the appropriate Directive 92/12/EEC are carried out. There are no specific random controls. Furthermore, there is no link between the sales on board aircraft and the sales at the airport, which is no major problem because the turnover on board aircraft is rather limited.

## **Section 7. Italy**

### **Preliminary remarks**

The mission was bound for the airport of Milan-Linate. The mission comprised meetings with the Italian customs authorities, with representatives of DUFITAL s.p.a, which is the Swiss-based company holding the license for tax-free selling at the airport, and with representatives of ALITALIA s.p.a. as well as a visit on site. The visited airport, Linate, is an airport mainly devoted to business-traffic, which is why a very high percentage of the tax-free sales is related to intra-Community traffic. Generally, in Italy tax-free shops are situated in ports and airports; tax-paid shops have been opened at railway stations (Milan) and the creation of such shops at appropriate places at the motorways is under consideration.

### **Controls carried out by the vendors themselves**

The operators of tax-free shops control the quantitative limits of tax-free sales directly at the cash-registers. If the value limit for goods subject to this limit is exceeded, VAT is accounted for by the vendors for all goods. The client does not become aware of this; there is no price difference. The tax-free purchases carried out in the tax-free shop are treated with a stamp on the boarding card of the client. There is no link to the sales on board aircraft. Crew members from intra-Community flights as well as from third country flights do not have the opportunity to accomplish tax-free purchases.

### **Control of the vendor by the Member States' authorities**

The customs authorities are entitled to carry out spot controls on the sales completed by the passengers. Therefore the receipt is always attached with an adhesive to the bag of the goods. The cash-registers used in the tax-free shops are directly linked to a central computer that enables the authorities to provide for an outprint listing of the transactions whenever they wish so. Anyway, every evening the shop-keepers have to give to the authorities a listing which shows the turnover and the VAT for each transaction. Every two years the authorities take stock in order to establish a detailed inventory of the goods in the tax-free shops. This is also considered to be sufficient to (indirectly) control the sales on board aircraft. Nevertheless, a listing of all tax-free sales on board is transmitted to the airline in Rome which will take care for the levy of VAT on the part of the sales exceeding the appropriate limit.

According to the information given by the Italian authorities the control system described hitherto applies in more or less the same way to tax-free sales on ferries.

### **Special problems brought up during the visit**

As a result of the introduction of the vendor control system the turnover regarding spirits and cigarettes has significantly decreased, whereas the sales of perfumes has proved to be stable. Passengers usually show little understanding for the restrictions imposed and complain about the slow-down of passage at the cash-desks. The way the vendor control measures are applied at different airports within Italy and outside Italy may differ significantly which is a major concern of the Italian operators who fear distortions of competition. In addition, despite the provisions of the Council - deemed to only temporarily maintain the activities of tax-free sales sections - the creation of some new tax-free shops is envisaged in Italy.

## **Section 8. Netherlands**

### **Preliminary remarks**

The mission took place at the Amsterdam Airport Schiphol and included meetings with the customs authorities, the airport authorities, contacts with operators of tax-free shops as well as a visit on site.

### **Controls carried out by the vendors themselves**

Vendors use an appropriate software programme that has been screened by customs before. The flight number and the number of passengers buying tax-free goods are to be entered in the cash register. Vendors always ask for the boarding card of their customers (but do not stamp it). Limits relate only to passengers with a destination located in another Member State, not in a third country outside the Community. Accordingly, (at least since February 1994) sales to crew members operating on intra-Community flights are not allowed whereas crew members on third country flights can make preliminary orders for tax-free goods which are supplied on board aircraft. Passengers bound for another Member State can complete tax-free purchases within the authorized (value and quantitative) limits and above. In the latter case VAT is accounted for by the vendor without affecting the sales price to the passengers.

The cash-registers used in the tax-free shops are directly linked to a central computer calculating VAT to be paid to the authorities for sales exceeding the limit; the central computer then provides for an outprint listing of the sales made per flight number.

### **Control of the vendors by the Member States authorities and consequences for the vendor in case of non-applying the rules**

The control of the vendor as carried out by the customs authorities already starts before granting the status of agreed customs warehouse when the vendor's bookkeeping and administration is checked on transparency. Twice a year visits on site are accomplished by customs questioning (the embarking) passengers on a particular flight whether and what they have bought tax-free. According to an overview from 1993 an average of about 7% of the passengers questioned appeared to have exceeded the quantitative limit. From time to time customs officials try to carry out purchases above the authorized limits, but apparently no vendor seems to be violating these limits.

Four times a year a private firm (acting on behalf of the customs authorities) controls the quality standards, the attitude towards customers, the information given to travellers and the respect of tax-free limits. Furthermore, a posteriori administrative controls are carried out whereby the number and the volume of sales per flight in relation to the number and the volume of sales of passengers on a particular flight entitled to purchase free of tax are checked. If a shopkeeper abuses his right to sale tax-free goods his license will be withdrawn. Such a withdrawal would be due to the violation of his contract with the airport authorities about the respect of the legal provisions on tax-free sales.

### **Special problems brought up during the visit**

- Concerning the non-stamping of the boarding card in the Netherlands, airport officials pointed out that surveys on the purchase behaviours of travellers carried out by the airport authorities



and practical experience seem to show that repeat sales seldom take place. Following the yearly examinations of the purchase patterns and figures by the airport authorities - in general - no major change can be ascertained in the purchase behaviour compared to the situation before 1993. However, the total turnover and the turnover per passenger show a decrease although passenger traffic as a whole has increased. This development is said to be due to the introduction of the vendor control system.

- For certain flights arriving from other Member States, the customs authorities denounced problems on goods exceeding the quantitative limits.
- According to the vendors, travellers usually show little understanding for the fact that limits are applied on intra-Community travel and not on third country travel.

## **Section 9. United Kingdom (and the French channel coast)**

### **Preliminary remarks**

The visit related to the passing of the English Channel by ferry from Calais to Dover and by Jetfoil from Ramsgate to Ostend. It comprised various meetings with the Customs authorities in Dover and Calais as well as with operators of tax-free shops and trade industry; visits on site took place in duty-free-shops at the Hovercraft Port, the Channel tunnel terminal, the Jetfoil Duty Free Shop, on the ferry Calais-Dover, the Jetfoil Ramsgate-Ostend.

### **Calais in France**

#### **Controls carried out by the vendors themselves**

Except for the passage Calais-Dover, the vendor control system is based on a voucher system containing information with regard to the quantitative limits. The voucher is marked at the moment of sale. Further sales of goods of the same category are not allowed except where the passenger can prove, on the basis of the receipt of his former purchase, that the limit has not been reached yet.

On the Dover-Calais passage no voucher system is applied having regard to the time limit and the great number of passengers (approximately 16 million passengers a year). In contrast to the areas where a voucher system is applied a global accounting control system has been implemented. Moreover, the cashier in every salespoint has to verify that the appropriate limits of tax-free purchases are not exceeded. On board the two ferries on this line there are tax-free shops which are run by a subsidiary of the French SNCF and monitored by the French authorities.

Crew members are not allowed to complete tax-free purchases.

At the hovercraft port there are tax-free shops under French authorization and control at the embarking point. The boarding card is stamped once a sale is made. The vendor control system at the port (under French surveillance) and the vendor control system on board the hovercraft (licensed and controlled by the United Kingdom authorities) are not linked, but an official request for a bilateral agreement was under way from the British side.

At the time of the visit, the Irish-run tax-free shops in the Channel tunnel terminal (passenger and freight traffic) were about to establish a new vendor control system whose shaping was still unclear at that time.

### **Dover and Ramsgate (United Kingdom)**

#### **Controls carried out by the vendors themselves**

As far as the vendor control applied by the vendors themselves is concerned, there are two types in the United Kingdom:

1. First, vouchers can be used which is the case for all ferry routes (except the Dover-Calais ferry, but including the Dover-Calais crossings by Hovercraft). This voucher system works as follows: At the check-in hall each passenger is issued with a passenger ticket and a separate

voucher (duty-free Shopping Pass). The voucher is colour coded and details the date of travel and the duty-free allowances (operators often use it for marketing purposes as well). The voucher is ticked off at the moment of sale and the customer can complete further purchases of goods of the same category only when he can prove on the basis of the receipt of his former purchases, that the appropriate limit has not been reached yet. At the hoverport, where the hovercraft embarks, a tax-free shop is available as well. Purchases made in this shop are marked on a voucher and a second purchase on board the hovercraft is only allowed for the remainder of the duty-free allowance. Thus, a control link between sales at port and on board the hovercraft is established.

2. Secondly, the vendor control can rely on a gentlemen's agreement between the operators and the customs authorities and on traditional forms of monitoring. Due to the high density of travellers (approximately 16 million a year) being on board only a limited time and due to the fact that a voucher system does not make sense on this line because only about 30% of the passengers are making use of their duty free allowances (which means that 70% of the vouchers issued could be put in free circulation of a kind of "black market" or will be simply thrown away and picked up again) this approach is made use of on the Dover-Calais ferry. The appropriate limits are well published. The control is carried out by the cashier who will ask for documentary evidence (of an appropriate number of customers/passengers for this special sale) if the limit for tax-free purchases is reached three times or more. Moreover, supervisors from the operator, competitive operators and Customs are placed at the cashiers in order to observe the well working of the system.

Sales to crew members are not allowed. Sales exceeding the value limit of ECU 90 are possible; in this case VAT is accounted for by the vendor without affecting the sales price for the passenger. United Kingdom ferry operators are VAT identified in France (by means of a branch or through a tax representative) to account for VAT on sales on board a ferry travelling from Calais to Dover since, in principle, supplies are deemed to have taken place in the Member State from which transport begins. French ferry operators are not registered for VAT in the United Kingdom and not accounting for VAT on sales made during the return leg (Dover - Calais), which is a topic in discussion between the French and the British authorities. Approximately 50% of the VAT collected on the outward and the return leg is paid to the French authorities.

In the EUROTUNNEL duty-free shops no vouchers are issued; instead a global accounting system has been agreed (but at the time no audits were carried out as full services were not in operation yet). Concerning the tax-free sales at the harbours a voucher system is used and a vendor control system is applied making a link sales at port and on board vessels (Hovercraft, Jetfoil).

### **Control of the vendors by the Member States' authorities**

As far as the control of the vendors by the authorities is concerned, a global accounting control system is only used on non-voucher routes, i.e. Dover-Calais. Operators have to submit monthly returns to the authorities entailing statistics on sales per category of product and the number of passengers carried. On voucher routes an audit control system set up by customs is applied. An overall review and evaluation of the vendor control system applied was carried out by the customs authorities in June 1993; it came to the conclusion that no major evasion, avoidance or abuse could be ascertained. Instead, operators seem to be extremely careful in respecting the appropriate limits.

## **ANNEX 7**

### **RESULTS OF THE STATISTICAL RESEARCH ASSESSING MEMBER STATES' RETURNS TO THE APPROPRIATE DATA SHEETS**

# **RESULTS OF THE STATISTICAL RESEARCH ASSESSING MEMBER STATES' RETURNS TO THE APPROPRIATE DATA SHEETS**

## **INTRODUCTION**

The Commission has asked the Member States for statistical data on tax-free sales. Nine Member States (BE, DK, EL, ES, FR, IRL, NL, PT and UK) have replied to the letter with four data sheets (see Annex 6) asking for information on

- the number of passengers,
- the turnover deriving from tax-free sales (distinguishing the different categories of products: alcoholic beverages, tobacco, perfumes and toilet water, other products),
- the number of sales outlets,
- the number of operators and, where appropriate,
- the total floor space taken by the sales outlets.

These statements were to be made respectively for

1. tax-free sales in airports (total sales and sales to intra-Community passengers),
2. tax-free sales on board aircraft (on intra-Community flights by airlines having their primary establishment in the Member State concerned),
3. tax-free sales on board ferries (on intra-Community crossings by ferry operators having their primary establishment in the Member State concerned), and
4. tax-free sales in ports (to passengers departing to other Member States). As only one Member State was able to supply complete data on these sales, they are not further analysed.

The economic analysis of the statistical data made below endeavours

- to have a closer look at the assertion (often made by operators and representatives of the respective associations during the visits in various Member States) that the introduction of the vendor-control system led to a sharp decrease in the sales in question,
- to find out whether there is a particular trend in the development of sales after the introduction of the vendor-control system, and if so, which,
- to get an idea of possible regional differences and differences according to the place of sale (airports, ferries, aircraft) in such a trend and
- to discover at least some of the reasons for the development found.

Of course, it is impossible to take into account all the factors influencing the development of tax-free sales of certain tax-free goods in certain countries in certain places. There are too

many important aspects which are not covered by the information asked for and given to the Commission (e.g. "normal" trade cycles, industrial fluctuations, changes in consumer behaviour—etc.; all of these factors may differ for each Member State). Inflation is not explicitly taken into account. Apart from the fact that exchange rates to a certain extent reflect inflation it is supposed to be a minor factor in this context, at least for the years 1992 and 1993.

Therefore, the fundamental approach of the analysis made below focuses on the following questions:

- Is there a particular trend in the development of tax-free sales from 1992 to 1993 **per place of sale**?
- Is there a particular trend in the development of tax-free sales from 1992 to 1993 **per country**?
- Is there a particular trend in the development of tax-free sales from 1992 to 1993 **per category of goods**?
- Is it possible to explain the trend in the development of tax-free sales from 1992 to 1993 per country or per place of sale with the **respective development of the number of operators, of sales outlets or the total floor space taken by the sales outlets**?
- Is it possible to explain the changes in demand by the development of the **exchange-rates** in the appropriate countries?

The statistical data is presented in the following analysis to answer these questions. Since a detailed distinction of the development of tax-free sales in nine Member States relating to four categories of products sold in four different situations to be calculated in two currencies (national currency and ECU<sup>6</sup>) is not feasible in a report like this, the general approach will be to assess the overall development per place of sale, per Member State and per category of goods first and establish a more detailed presentation and analysis according to the findings of the overview.

The quality of data given to the Commission does not always meet the requirements necessary in order to draw statistically well-founded conclusions. According to national peculiarities, the answers given in the data sheets are sometimes rather variable and not always comparable with each other (e.g. sometimes there are only global figures given and sometimes there are only figures for one year available). This has to be taken into account when it comes to drawing conclusions from the findings of the analysis.

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<sup>6</sup> Conversion rate used: as respectively published on 30 September 1992 and on 30 September 1993.

## **CHAPTER 1**

### **DEVELOPMENT OF TAX-FREE SALES IN THE COMMUNITY**

#### **Section 1. Preliminary remarks**

- It is impossible to give a detailed and complete overview of the development of tax-free sales all over the Community from 1992 to 1993 because not all Member States replied to the Commission's request and those who replied generally gave incomplete figures (for various reasons: the figures needed are not accessible and - in some cases - because of unforeseen bankruptcies (in DK) or organizational difficulties the data are no longer available). Therefore, the analysis made below cannot give absolute "hard facts" but it will surely describe the underlying tendencies well.
- The basis for establishing the tables and figures in this chapter can be seen in the following table:

Member State	Tax-free sales			
	At airports	At aircraft	On board ferries	At ports
BE	Complete	Complete	Complete	-/-
DE	Figures are not available and still outstanding. Since Germany charges VAT on sales in duty/excise free shops, there is no major problem arising from the lack of figures.			
DK <sup>7</sup>	Complete	Complete, but only totals	Complete	-/-
EL	Complete	Complete	Complete	Complete
ES	In percentage and totals	Complete	Complete for 1993	Barcelona
FR	Totals distinguishing French and foreign products.			
IRL	Complete	Complete (totals)	Complete	-/-
IT	Figures are not available and still outstanding.			
LU	Figures are not available and still outstanding. Since Luxembourg charges VAT on sales in duty/excise free shops, there is no major problem arising from the lack of figures.			
NL	Complete	Complete	Complete	-/-
PT	Complete	Complete	-/-	-/-
UK	Complete	-/-	Complete	-/-

Table 1. Completeness of data returns given to the Commission

The expression "complete" in this table means:

- that all relevant sites in the country appear to be covered,
- that the figures are given for all categories of goods and
- that the figures are available for 1992 and for 1993.

The tables in Sections 2 to 4 below are dealing with tax-free sales from a certain point of view (respectively place of sale, country and category of goods). It is reminded that data concerning sales on board aircraft and ferries only relate to intra-Community traffic. Data relating to sales at airports also include sales to third country travellers. This is because only a few Member States communicated separate figures for sales to intra-Community travellers (These figures are analysed in Chapter 2 of this Annex).

<sup>7</sup> There are no complete figures for Copenhagen; therefore they are not taken into consideration for establishing the tables.



## Section 2. Tax-free sales per place of sale in ECU

Following the general analytical approach, the first question to be examined by looking at the statistical data put at the Commission's disposal, is how tax-free sales have developed in different places of sale and in total.

The appropriate table set out below is based on the (tax-free sales) figures from seven countries<sup>8</sup> (at maximum) and does not take into account Spain (only partly<sup>9</sup>), France, Italy, Germany and Luxembourg and the airport of Copenhagen.

Place of sale	1992	1993	Change
At airports	989,688,422	1,050,156,959	+ 6.11%
On board aircraft	46,062,852	47,543,582	+ 3.21%
On board ferries	447,339,638	556,774,704	+ 24.46%
Total	1,483,090,912	1,654,475,245	+ 11.56%

Table 2. Evolution of tax-free sales per place of sale (totals of intra-Community and third-country sales in ECU)

The figures shown in the table indicate

- an increase in tax-free sales despite the introduction of vendor-control-procedures in the Community; and
- an increase of tax-free sales even at airports, but especially on board ferries which may be due to the fact that the vendor-control procedures are generally less strictly or even not applied at all on board vessels.

However, while evaluating these results it has to be taken into account that the figures of four Member States are missing and that the calculation has been made in ECU. Therefore it has to be verified if the trend of development is the same in the national currencies or if changes of the exchange-rate and of the composition of the European Currency Unit have lead to distortion of the figures. This will be looked at in Chapter 2.

The next step is to examine, if there are differences in the development of tax-free sales in the different countries.

## Section 3. Tax-free sales per country in ECU

The question of this part of the analysis is, how - according to the statistical data put to the Commission's disposal - tax-free sales have developed in different Member States and whether differences might originate from different systems of vendor control<sup>10</sup>.

The following table gives an overview of the information about tax-free sales in 1992 and

<sup>8</sup> The figures for tax-free sales on board aircraft in Greece have been projected by doubling the data given because this was available only for the second half of the year.

<sup>9</sup> Figures for tax-free sales on board ferries were available only for 1993 and have been left out.

<sup>10</sup> It is reminded that sales on board aircraft and ferries relate to sales made by companies having their primary establishment in the Member State concerned.

1993 given by Member States' authorities in this respect<sup>11</sup>.

Member State		1992	1993	Change
BE	Total	104,881,409	94,019,025	-10.36%
DK	Total	177,019,597	178,171,573	+0.65%
EL	Total	92,888,368	101,498,967	+9.27%
ES	Total	152,136,565	145,017,367	-4.68%
FR	Total	314,678,877	281,941,458	-10.40%
IRL	Total	89,578,783	90,475,830	+1.00%
NL	Total	262,541,616	269,133,939	+2.51%
PT	Total	37,899,950	34,310,496	-9.47%
UK	Total	571,308,511	746,811,814	+30.72%

Table 3. Evolution of tax-free sales per Member State (totals of intra-Community and third-country sales in ECU)

The figures show:

- that in three Member States there was a significant decline of tax-free sales from 1992 to 1993 (about 10% in BE, FR and PT); a slighter decrease is noticed for Spain.
- that in three Member States the turnover deriving from tax-free sales was more or less the same in 1992 and in 1993 (DK, IRL and NL);
- that in two Member States tax-free sales increased remarkably from 1992 to 1993 (EL and UK).
- that there is a large difference between the Member States in the results of the same place of sale (e.g. on board aircraft from -13% in PT to +235% in EL).

The increase for all the places of sale in Greece is mainly due to sales on board aircraft. Taking into account that the number of passengers has only slightly changed in this period (from 1,266,695 in 1992 to 1,301,810 in 1993) it seems to be clear that a substantial shift in tax-free sales has taken place. However, this result has to be evaluated cautiously, because the appropriate Greek figures for ferries have been incomplete and estimates were necessary in order to use them.

France shows a relatively sharp decrease of tax-free sales which is mainly due to intra-Community travel (ECU 162,042,108 in 1992 to ECU 125,809,440 in 1993, which means a decrease of 22.36%<sup>12</sup>). However, even the third-country tax-free sales have been falling, but less steeply. Unfortunately no figures about the evaluation of the number of passengers, the number of sales outlets, the number of operators and the total floor space taken by the sales

<sup>11</sup> The figures for tax-free sales on board aircraft in Greece have been projected by doubling the data given because this was available only for the second half of the year.

<sup>12</sup> The figures supplied by France did not contain the sales on board aircraft.

outlets are available, so that a real assessment of the development is not possible. Anyway, a decisive influence of the vendor-control procedures cannot be ascertained, since at least the development of third-country sales shows that there have to be other reasons determining the decline.

The major part of the increase of tax-free sales in the Community (which has been determined above) is obviously due to the development in the United Kingdom, where an increase of about 30% has taken place. In absolute terms this trend outweighs the negative trend established in some of the other Member States. Taking into consideration the appropriate number of passengers at the airports and on the ferries in the United Kingdom one determines an increase of tax-free sales per person in ECU of 32.79% (ferries) and 14% (airport), which indicates that the trend in tax-free sales can partly be founded on the increase of passenger transport as a whole (see in detail Chapter 2; unfortunately there are no figures concerning the British airports).

Again, while evaluating these results it has to be taken into account that the figures of four Member States are missing and that the calculation has been made in ECU. Therefore it has to be verified if the trend of development is the same in the national currencies or if changes of the exchange-rate and of the composition of the European Currency Unit (ECU) have lead to distortion of the figures (see Chapter 2).

#### **Section 4. Tax-free sales per category of goods in ECU**

The question to be analyzed in this part of the report is, how - according to the statistical data put to the Commission's disposal - tax-free sales have developed for different categories of goods.

The table below summarizes the information given by the Member States in this respect:

Category of goods		Place	1992	1993	Change
Alcoholic beverages		Aircraft	3,041,970	3,539,345	+16.35%
		Ferry	138,731,608	182,126,334	+31.28%
		Airport	199,463,600	201,383,590	+0.96%
		Total	341,237,178	387,049,269	+13.43%
	Total incl. France		401,432,640	438,035,778	+9.12%
Tobacco products		Aircraft	8,905,785	12,961,983	+45.55%
		Ferry	137,592,930	186,631,961	+35.64%
		Airport	191,399,489	186,117,166	-2.76%
		Total	337,898,204	385,711,110	+14.15%
	Total incl. France		395,337,772	439,358,683	+11.14%
Perfumes		Aircraft	12,713,394	13,022,946	+2.43%
		Ferry	59,011,765	68,942,102	+16.83%
		Airport	228,409,888	240,756,251	+5.41%
		Total	300,135,047	322,721,299	+7.53%
	Total incl. France		391,852,391	404,710,367	+3.28%
Other goods		Aircraft	13,861,828	12,943,062	-6.63%
		Ferry	112,003,335	119,074,308	+6.31%
		Airport	370,257,754	421,775,087	+13.91%
		Total	496,122,917	553,792,457	+11.62%
	Total incl. France		601,449,420	649,110,765	+7.92%

Table 4. Evolution of tax-free sales per category of goods (totals of intra-Community and third-country sales in ECU)<sup>13</sup>

The increase of tax-free sales as calculated in ECU on the basis of Member States' information does not indicate a significant advantage for a certain category of product (increase for all from 9% to 14% without France; even whilst including the total from intra-Community and third-country figures from France the increase is still significant). Not astonishingly, the sales

<sup>13</sup> The French figures are based upon the official French statistics and therefore distinguish the products sold according to their origin, France or abroad. Consequently they cannot be integrated in the tables. Only the overall totals can be used as supplementary information.

figures for the different categories of products vary according to the place where sales are made (main increase on board aircraft and on board ferries). Further investigation in this respect does not seem necessary: obviously the vendor-control-procedures - though partly different for products under a value limit and under a quantitative limit - do not affect the appropriate sales figures.

## **Section 5. Conclusion**

The trend of tax-free sales all over the Community consists of a remarkable increase of sales (calculated in ECU) which is mainly due to the development in certain Member States whereas a relative majority of Member States have to report stable or decreasing sales figures in this sector. Major differences concerning the category of goods sold could not be ascertained, whereas it appears that increases of tax-free sales took mainly place on board ferries.

## CHAPTER 2

### EVOLUTION OF TAX-FREE SALES PER PLACE OF SALE

The analysis below focuses on the following key figures (where available):

- Total sales in national currency (1992 and 1993).
- Percentage change of total sales (1992/1993).
- number of passengers (1992 and 1993).
- Percentage change in ECU of total sales per passenger.
- Percentage change in ECU of total sales.

These aspects are dealt with in the following sections distinguishing the place of sale (which seems to be the most interesting topic from the vendor-control point of view).

#### **Section 1. Tax-free sales at airports**

Table 2 of Chapter 1 showed that on an ECU-basis tax-free sales at airports have slightly increased. Even when taking into account that the evolution in France was negative and that figures from Italy are missing<sup>14</sup>, the overall conclusion that at least no significant decline of tax-free sales at airports has taken place from 1992 to 1993, appears to be justified. Hence, the question arises if this finding is mainly influenced by the introduction of the vendor control system or by other aspects, such as changes of the exchange rate or the number of passengers. The following table attempts to provide some figures for answering this question:

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<sup>14</sup> The German and the Luxembourg figures are missing as well, but these countries charge VAT anyway.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Member State	Total sales in 1992 (national currency)	Total sales in 1993 (national currency)	Change in total sales (national currency)	Number of passengers departing in 1992 (total)	Number of passengers departing in 1993 (total)	Change of sales per passenger in ECU	Change of total sales in ECU
BE	3,262,646,613	2,930,494,311	-10%	4,672,186	5,203,062	-21%	-11%
DK	40,923,139	49,992,499	+22%	369,038	401,373	+11%	-21%
EL	18,702,567,579	21,736,643,472	+16%	6,893,769	7,446,528	-1%	+7%
ES	20,152,105,000	21,336,566,000	+6%	16,850,960	17,287,620	-7%	-5%
IRL	46,207,247	48,483,862	+5%	6,684,887	6,723,915	-4%	+4%
NL	476,449,100	471,210,200	-1%	9,546,070	10,862,006	-10%	+3%
PT	5,820,592,000	5,940,101,000	+2%	4,685,965	4,663,813	-9%	-9%
UK	295,550,658	347,568,461	+18%	29,610,495	30,951,629	+14%	-19%

Table 5. Tax-free sales in airports (sales to passengers departing to both other Member States and third countries)

If one compares the change of tax-free sales in airports per country from 1992 to 1993 in national currency (column 4) and in ECU (column 8) one can observe two effects: In some countries exchange rates did, to a certain extent, influence the evolution of tax-free sales at airports (EL, ES, IRL and PT), in others no major impact can be established. If there is such an influence, the increase in national currency is higher than in ECU or there is even a decrease of sales in ECU. This is a logical consequence of depreciation, which as such might have been a reason for the increase as a whole.

Looking into column 7 [change in ECU per passenger] and comparing it with the figures from column 8 [change in absolute figures] gives a certain idea of the possible influence of the number of passengers on the evolution of tax-free sales at airports. Again, no single trend can be established for the whole of the Community. For Ireland, Spain and Portugal there is no or little difference between both figures which seems to indicate that the increase of tax-free sales is linked to the increase of the number of passengers. The increase in the United Kingdom and in Denmark is less significant when calculated per passenger and for Greece, Belgium and the Netherlands, too, the development per passenger is more negative than could have been expected from the absolute figures.

Generally speaking, it has to be said that passenger traffic at airports had increased which as such is surely no negative aspect for the business, be it tax-free or (later on) tax-paid.

Only four Member States were able to supply separate data on sales to travellers departing to other Member States. These data are set out in the following table:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Member State	Total sales in 1992 (national currency)	Total sales in 1993 (national currency)	Change in total sales (national currency)	Number of passengers departing in 1992 (total)	Number of passengers departing in 1993 (total)	Change of sales per passenger in ECU	Change of total sales in ECU
BE	2,093,790,244	1,642,015,562	-22%				-23%
EL	11,922,295,077	13,702,175,556	+15%	4,478,437	4,941,906	-4%	+6%
IRL	36,076,977	37,555,866	+4%	3,085,179	3,141,186	-6%	-4%
UK	117,576,077	129,984,163	+11%	13,721,009	14,211,040	+8%	+12%

Table 5a. Tax-free sales at airports to passengers departing to other Member States

The comparison of the change of tax-free sales at airports per country from 1992 to 1993 in national currency (column 4) and in ECU (column 8) reveals significant differences for Greece and Ireland - as explained above presumably linked to the depreciation of their currency - and does not show such differences for Belgium and the United Kingdom. Looking into column 7 [change in ECU per passenger] and comparing it with the figures from column 8 [change in absolute figures] reveals a major difference for Greece only, which is absolutely coherent with the overall trend established for Greece. The limited data available do not allow to draw general conclusions. However, for Member States that supplied data, it would seem that the intra-Community figures basically follow the same trend as the overall figures.

## Section 2. Tax-free sales on board aircraft on intra-Community flights

A first result of the statistical research done with figures in ECU was that tax-free sales on board aircraft have increased. This evolution can be due to the introduction of the vendor control system (which does not seem to work properly on board aircraft) or to changes of the exchange rate or the number of passengers. The following table attempts to find an answer to this question. It has to be remembered that the figures for each Member State relate to sales on intra-Community flights by airlines having their primary establishment in the Member State concerned.



(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Member State	Total sales in 1992 (national currency)	Total sales in 1993 (national currency)	Change in total sales (national currency)	Number of passengers departing in 1992 (total)	Number of passengers departing in 1993 (total)	Change of sales per passenger in ECU	Change of total sales in ECU
BE	244,482,166	234,169,623	-4.22%	1,550,854	2,093,949	-30.10%	-5.62%
DK	396,000	514,000	+29.79%	23,410	30,550	-1.51%	+28.53%
EL	<sup>15</sup> 385,140,300	1,191,111,290	+209.27%	1,266,695	1,301,810	+227.36%	+235.05%
ES	908,768,220	1,030,477,563	+13.39%	2,368,138	2,543,750	-5.25%	+1.77%
IRL	5,047,669	7,198,306	+42.61%	4,563,861	4,712,446	+26.91%	+31.04%
NL	45,411,287	38,234,430	-15.80%	3,998,390	4,159,570	-16.04%	-12.66%
PT	828,878,510	807,298,150	-2.60%	1,601,888	1,830,854	-23.97%	-13.11%

Table 6. Tax-free sales on board aircraft

As far as the possible influence of changes in the exchange rates is concerned the comparison between the change of the tax-free sales figures on board aircraft in 1992 and 1993 in national currency (column 4) and in ECU (column 8) shows that no major difference can be ascertained for Belgium, Denmark and the Netherlands. In Spain, Ireland and Portugal the change in national currency was larger than in ECU. Especially in Spain and Ireland the depreciation of the currency seems to have stimulated tax-free sales on board aircraft.

Regarding the number of passengers transported and its relation to the development of tax-free sales on board aircraft, a look at the columns 7 [change in ECU per passenger] and 8 [change of the absolute figures] apparently indicates that in some countries passengers seem to have changed their purchasing behaviour remarkably. While the decrease of tax-free sales on board aircraft per passenger is even much more significant than in absolute figures, the opposite is true for Denmark. At this stage it is difficult to decide whether this development is due to the differences in the functioning of the vendor control systems applied or to other aspects, such as differences in marketing, advertisements, etc.

### Section 3. Tax-free sales on board ferries operating on intra-Community crossings

According to the approach chosen for the research in this part of the study it now has to be decided, whether the assertion of Chapter 1, that tax-free sales on board ferries have significantly increased, can be maintained when the basis of the calculation are the national currencies (instead of the ECU) and when the results are weighted by the evolution of

<sup>15</sup> The figures for tax-free sales on board aircraft in Greece have been rebuilt by means of doubling the data given because these were available only for the second half of the year.

passenger traffic at the time. The following table provides some useful figures in this regard. It has to be remembered that the figures for each Member State relate to sales on intra-Community crossings by ferry operators having their primary establishment in the Member State concerned.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Member State	Total sales in 1992 (national currency)	Total sales in 1993 (national currency)	Change in total sales (national currency)	Number of passengers departing in 1992 (total)	Number of passengers departing in 1993 (total)	Change of sales per passenger in ECU	Change of total sales in ECU
BE	752,294,000	710,255,000	-5.59%	2,167,652	1,867,897	+7.96%	-6.97%
DK	1,310,129,894	1,323,109,019	+9.91%	1,710,628	1,610,558	+6.22%	+0.01%
EL	3,184,660,486	3,663,831,486	+15.05%	708,535	638,445	+17.68%	+6.04%
ES		2,863,099			294,195		
IRL	15,936,159	18,172,800	+14.03%	1,630,260	1,562,346	+9.34%	+4.78%
NL	60,982,000	66,502,000	+9.05%	1,906,708	1,913,009	+12.76%	+13.13%
UK	154,800,000	235,000,000	+51.81%	19,000,000	22,000,000	+32.79%	+53.76%

Table 7. Tax-free sales on board ferries

Comparing the percentage of change of tax-free sales on board ferries from 1992 to 1993 in national currency (column 4) and in ECU (column 8) leads to some conclusions about the influence changing exchange rates had on the evolution of tax-free sales on board ferries. Three countries show a significant difference between both figures: Denmark, Ireland and Greece; in all of them the positive trend is even higher in national currency than in ECU. This may be a hint of the intrinsic influence of devaluation on the increase of tax-free sales in a country whose currency became weaker.

The increase in the number of passengers may be another "natural" reason for the increase in tax-free sales being ascertained in this field. The figures in the columns 7 [change in ECU per passenger] and 8 [change of the absolute figures] indicate that in Belgium the decrease of sales in absolute figures corresponds to an increase per passenger or, in other words, that Belgium has suffered from an even greater deterioration of the tax-free business than the pure figures seem to show at first glance. In Denmark, Ireland and Greece the increase per passenger is also higher than the increase in absolute figures. Only in the United Kingdom, which holds the largest share of the market in this respect, the increase per passenger is smaller than in absolute figures. However, more than 30% does still represent a very significant increase.

Summing up, it seems quite obvious that the increase of tax-free sales on board ferries in relation to passenger traffic is even higher than was to be expected from the calculation in ECU in Chapter 1. A certain (sales-encouraging, positive) influence of the exchange rate evolution appears to be probable for various countries but the figures do not allow indubitable

conclusions in this sense.

## **Section 4. Conclusion**

Despite the incompleteness of data the statistical research concerning the evolution of tax-free sales in ECU all over the Community clearly indicates that from 1992 to 1993 there was an overall increase of tax-free sales which was geographically split, moreover major differences regarding the place of sale (and the means of transport) were to be ascertained whereas the category of goods did not play an important role in this respect (the development of sales was more or less the same for all categories of goods). The conclusion to be drawn from these results in terms of "vendor control" is that the vendor control systems applied in the different Member States seem to allow a different evolution of tax-free sales and that all over the Community controls carried out on board aircraft and especially on board ferries are essentially less strict than those on the ground at airports. Passengers obviously become aware of these differences in control and adapt their purchasing behaviour (e.g. by buying cigarettes on board aircraft instead of purchasing them at the airport).

The influence on these first results by the evolution of the exchange rates or the evolution of the number of passengers appears to be rather limited. Apart from some minor cases, the calculation of the figures in national currencies or in relation to the number of passengers in 1992 or in 1993 did not change the trend established before (per country or per place of sale).

Passenger traffic as a whole has increased from 1992 to 1993 and thus favoured the positive development of tax-free sales. However, where the purchases per passenger are concerned, there is only a significant overall increase for sales on board ferries, which can be related to vendor control procedures. Other explanations for this change are not convincing because a general increase in the demand of alcoholic beverages, tobacco products, perfumes, toilet waters and luxury goods at the time does not seem plausible.

In some countries the devaluation of the national currency seems to have had a certain stimulating effect on the evolution of tax-free sales as well, but again no trend-changing influence can be determined.

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